

IN THE HIGH COURT OF TANZANIA

AT TABORA

(HIGH COURT LABOUR DIVISION)

LABOUR APPLICATION NO. 20 OF 2018

*(Arising from the decision of the High Court of Tanzania at Tabora
Labour Application No. 1 of 2014 before J.B. Mallaba dated
17/09/2018, Originating from CMA Tabora Labour Dispute No.
CMA/TAB/DISP/31/2013)*

BETWEEN

BRUNO CHARLES MATALU.....1ST APPLICANT

MARY JUMA MASUMBUKO.....2ND APPLICANT

RULING

Date of Last Order: 2/08/2021
Date of Delivery: 11/08/2021

AMOUR S. KHAMIS, J.:

Bruno Charles Matalu and Mary Juma Masumbuko are aggrieved by the Judgement of this Court (Mallaba, J – as he then was) in Labour Application No. 1 of 2014 delivered on 17/09/2018.

On 26th day of November 2018, the duo filed this application for extension of time to seek leave to appeal to the Court of Appeal.

The application was made by way of Chamber Summons under Rules 24(1), 24(2), (a), (b), (c), (d), (e), (f) and Rule 24(3) (a), (b), (c), (d) of the Labour Court Rules, 2007, G.N No. 106/2007 read together

with Section 91(1) (a) and Section 91(2) (a), (b) of the Employment and Labour Relations Act, No. 6 of 2007.

An affidavit sworn by Bruno Charles Matalu supported the application alongside a notice of application preferred under provisions of the law similar to those outlined in the Chamber Summons.

In the said affidavit, Bruno Charles Matalu deposed that parties' dispute originated in the Commission for Mediation and Arbitration (CMA) vide Labour Dispute No. CMA/TAB/DISP/31/2013.

The deponent said following decision of Justice Mallaba, J, he filed a notice of appeal to the Court of Appeal on 26/7/2018. However, his sickness thereafter caused the delay.

Ndala Hospital challenged the application by way of a Counter Affidavit sworn by Revocatus Mugaya Kaitila Mtaki, learned advocate of this Court, dated 14th day of February 2019.

Mr. Mtaki averred that the applicant's allegations are vague allegedly because he did not disclose the dates when he fell sick, the nature of treatment and the date he recovered from the alleged sickness.

When the matter was placed before me for hearing, Mr. M.K Mtaki, learned advocate, acted for Ndala Hospital, the respondent herein while Bruno Charles Matalu and Mary Juma Masumbuko, the applicants, appeared in person and fended for themselves.

The application was heard viva voce with both sides adopting contents of their respective affidavit and counter affidavit.

In addition, Mr. Mtaki contended that the applicants failed to account for the delay and to that end, cited *MBOGO V SHAH (1968) EA* wherein the Court insisted on the need to disclose reasons for the delay.

In rejoinder, Bruno Charles Matalu contended that the medical chits were attached to the affidavit in support of the application and marked "BM".

He reiterated that the notice of appeal was timely issued as shown in a copy attached to the affidavit.

Bruno Matalu disclosed that on 3/10/2018 he was treated at Nzega Hospital and excused from duty for (14) days. He was also required to use medication for twelve (12) days.

Further, Bruno Charles Matalu said all necessary particulars were shown in a medical report attached to the affidavit in support of the application.

Mary Juma Masumbuko joined hands with Bruno Charles Matalu and invited this Court to grant the application.

The issue is whether the application disclosed a sufficient cause for extension of time.

Rule 56 (1) of the **LABOUR COURT RULES, 2007 G.N. NO. 106** Published on 18/5/2007, provides that this Court may extend or abridge any period prescribed by those rules on an application and

on good cause shown unless precluded from doing so by any written law.

In paragraph 3 of the affidavit of Bruno Charles Matalu, the applicant disclosed a reason for delay, thus:

“3. But I was a little bit late to file leave of appeal to the Court of Appeal of Tanzania due to the fact that I was very sick and I had to attend treatment at Nzega District Hospital. That immediately after I started to recover from sickness, I realized that I was out of time to file leave to appeal to the Court of Appeal of Tanzania leading to this application for extension of time. The annexed copy hereto is a copy of a letter addressing the same issue and I crave for leave of the Court to refer to it in weighing up this point. It is marked as annexure BM2”.

Annexure BM 1 to the affidavit of Bruno Charles Matalu is copy of a notice of appeal presented for filing at the High Court of Tanzania, Tabora, on 26/09/2018.

The notice was made under Rule 83 (1) of the Tanzania Court of Appeal Rules, 2009 indicating that Bruno Charles Matalu and Mary Juma Masumbuko were dissatisfied with the decision of this Court dated 17th day of September 2018.

Annexure “BM2” is a medical report for Bruno Charles Matalu issued by the Medical Officer In charge, Nzega District Hospital, on 3rd day of October 2018.

The report signed by Dr. Ngu'mbu Manumba show that Bruno Charles Matalu attended the hospital for treatment with multiple complains.

The hospital diagnosed him with enteric fever and mild isolated hypertension.

He was put on antibiotics for fourteen (14) days and resting with minimal movements for four (4) weeks.

Having considered the parties rival submissions and on analysis of annexures "BM1" and "BM2" to the affidavit of Bruno Charles Matalu, as above stated, I am satisfied that truly, the first applicant was sick at a time that the appeal ought to have been filed.

I am also satisfied that prior to sickness, Bruno Charles Matalu and Mary Juma Masumbuko, issued a timely notice of appeal against the impugned judgment demonstrating their desire to challenge the decision.

In these circumstances, I am not in agreement with Mr. Mtaki that the applicant failed to show a cause for the delay.

Instead, a sufficient cause for the delay was shown and the application is thus granted as prayed.

Each party to bear own costs. It is so ordered.



AMOUR S. KHAMIS

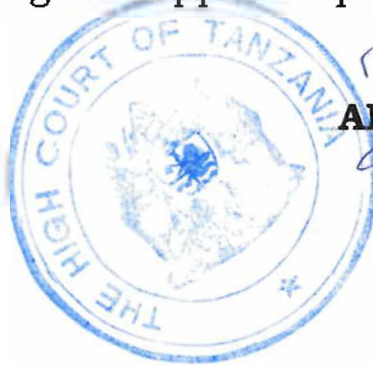
JUDGE

11/08/2022

ORDER

Ruling delivered in open Court in presence of Ms. Joyce Nkwabi, learned advocate for the respondent and the applicant in person.

Right of Appeal Explained.



[Handwritten Signature]
AMOUR S. KHAMIS

JUDGE

11/08/2022