

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

MISC. LABOUR APPLICATION NO. 03 OF 2020.

*(From the Decision of the Registrar of Organizations, Dated
08/02/2020).*

CHAMA CHA KUTETEA HAKI NA MASLAHI

YA WALIMU TANZANIA (CHAKAMWATA)APPLICANT

VERSUS

THE REGISTRAR OF ORGANIZATIONS.....RESPONDENT

RULING

24/03 & 12/05/2021.

UTAMWA, J:

In this application, the applicant is CHAMA CHA KUTETEA HAKI NA MASLAHI YA WALIMU TANZANIA (CHAKAMWATA). The name of the applicant is in Kiswahili, but can be translated to English as "An Organisation for Protecting Teachers' Rights in Tanzania". She is a

registered trade Union. The applicant sought for an extension of time to appeal against the decision (impugned decision) of the REGISTRAR OF ORGANIZATIONS (the respondent) dated 8/2/2020. The impugned decision cancelled the registration of the applicant from the register (of Trade Unions and Employers) and ordered for the surrender of the registration certificate and other documents (to the respondent) within 14 days from the date of the decision.

The application is preferred under Rules 24 (1), (2) (a) – (f), (3) (a) – (d), 25 (1), (2) (a) and (b), (3) 55 (1), (2) and 56 (1) and 56 (1) and (3) of the Labour Court Rules, 2007, GN. No. 106 of 2007 (the Labour Court Rules). It is supported by an affidavit of the General Secretary and Accounting Officer of the applicant, one Mr. Meshack Lupakisyo Kapange. The respondent objected the application through a counter affidavit sworn by the Principal Officer of the respondent, one Pendo Z. Berege.

In hearing the application through written submissions, the applicant was represented by Mr. Luka Ngogo, learned Advocate. On the other side, the respondent was represented by Ms. Alice Mtulo, learned State Attorney.

The affidavit supporting the application essentially deponed that, the applicant is a registered trade union dealing with affairs of teachers throughout the country. On 20/02/2020 she received a letter through her postal address from the respondent cancelling the registration of the applicant's name from the Register. The letter was issued on 08/02/2020, but it was effective 06/02/2020. The reason for the cancellation was the failure by the applicant to register her Board of

Trustees (the Board). The applicant was aggrieved by the impugned decision since the reason for the cancellation was not fair. This was because, she had already lodged an application for registering the Board to the responsible authority, i.e the Registration and Insolvency of Trustees Agency (RITA).

The affidavit further stated that, being aggrieved by the impugned decision, the applicant on 27/02/2020, filed an appeal before this court to challenge it vide Appeal No. 1 of 2020. The appeal was struck out on technicalities on 30/02/2020 (later corrected to read 30/3/2020). The applicant thus, filed this application for extension of time on the ground that, the delay was caused by prosecuting the previous appeal. It was also deposed in the affidavit that, the delay was further caused by lack of information on the posting of the letter through the applicant's postal address. The affidavit added that, the decision was tainted with patent illegalities and irregularities.

In his submissions supporting the application, the applicant's counsel adopted the contents of the affidavit. He also argued that, the application was based on two grounds; i. e the principle of technical delay and the point of illegality.

Regarding the ground on technical delay, the applicant's counsel contended that, the applicant had delayed in prosecuting the Appeal No. 1 of 2020 which was struck out on 30/03/2020. The delay was thus, not an actual delay. He further argued that, upon the appeal being struck out, he promptly filed the application at hand within three days i.e on 03/04/2020. He thus prayed for this court to grant the application because a technical delay constitutes a sufficient reason for this court to

grant the prayed extension of time. To support his argument, he cited the precedents by the Court of Appeal of Tanzania (CAT) in the cases of **Fortunatus Masha v. William Shija and Another (1997) TLR 154** and **John Harold Christer Abrahson v. Exim Bank (T) Limited, Civil Application No. 224 of 2018, CAT at Dar es Salaam** (unreported). He added to the list, the decision of this court in **Fwanda Limited v. Marmo E. Granito Mines (T) LTD, Misc. Land Application No. 01 of 2019 High Court of Tanzania, at Mbeya** (unreported).

Regarding the point of illegality, he argued that, the respondent denied the applicant of the right to be heard by making the cancellation without firstly according her the chance to defend herself. Violating this fundamental principle of natural justice is a good reason for granting the extension of time. To buttress his contention, he cited the decision by the CAT in the case of **Laurent Simon Asenga v. Joseph Mgogo and 2 Others, Civil Application No. 50 of 2016, CAT at Dar es Salaam** (unreported).

Additionally, the learned counsel for the applicant contended that, the respondent had no jurisdiction/ powers to cancel the name of the applicant from the register since the powers to do so are vested in the Labour Court only as per section 55 of the Employment and Labour Relations Act, Cap. 366 R.E 2019 (the ELRA).

Furthermore, the applicant's counsel argued that, the impugned decision is tainted with illegalities since it was based on a misconception of law. This is because, the provisions of section 49 of the ELRA recognize the applicant as a legal person. Registering the Board would

thus, lead to the existence of two legal persons within the same institution. He thus, prayed for this court to grant the application.

The counter affidavit by the respondent essentially deponed that, the respondent actually sent a letter to the applicant informing her of the cancellation because she had violated her own constitution. The impugned decision was thus, in accordance with the laws of the land. The delay by the applicant was due to her laxity and negligence. Members of the organization will not suffer any disturbance when the application will be denied.

In her replying submissions, the respondent's counsel adopted the contents of the counter affidavit. She further argued that, an application for extension of time is granted at the discretion of the court which is exercised judiciously. In order for the court to grant the application, the principles set by the CAT in the case of **Lyamuya Construction Company Limited v. Association of Tanzania, Civil Appeal No. 2 of 2010** (unreported) must be observed. Those principles are as follows: **i)** the applicant must account for all days of the delay, **ii)** the delay should not be inordinate **iii)** the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and **iv)** if the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

She further argued that, the applicant did not comply with rule 30 (1) of the Labour Court Rules in not appealing within 15 days as required by the law. She also opposed the contention that there was illegality in the impugned decision. She further argued that, the

applicant was given the right to be heard since there were conversations between the two parties before the cancellation was effected. An example of the conversations is the letter dated 30/07/2019 with ref. No. RTU/U194/02/49. The letter bared the applicant from conducting her General Meeting since she was in violation of her constitution. Again, the letter dated 16/10/2019 clarified to the applicant that, there was an investigation by a committee which found some challenges and suggested that, the applicant should register the Board to handle her matters.

The respondent's counsel further contended that, the respondent had jurisdiction to make the impugned decision under section 55 (1) read together with section 46 (2) (d) of the ELRA. He also refuted the contention that, the court is the only authority mandated to make the cancellation. According to her, Section 55 (1) of ELRA uses the word "may" which does not mean an obligation. This is the spirit under section 52 (1) of the Interpretation of Laws Act, Cap. 1 R.E 2019. She also submitted that, the applicant's counsel misconceived the law by thinking that, it had legal personality upon being registered under section 49 (1) of the ELRA. In fact, she had the duty to also follow its constitution which requires her to register the Board under the Trustees of Incorporation Act, Cap. 318 R.E 2019. Nonetheless, she did not do so. The applicant thus, violated her own constitution.

Moreover, the respondent's counsel submitted that, the alleged technical delay was due to the negligence of the applicant's advocate. The same cannot therefore, be condoned by this court. Advocates are obliged to act diligently in conducting cases as guided by the CAT in the case of **Martha Khotwe v. Miston Mwanjamila, Civil Application**

No. 5 of 2014 CAT at Mbeya, (unreported). She thus, urged this court not to grant the application since the applicant failed to give any sufficient reason for the delay. She also prayed for costs.

In his rejoinder submissions, the applicant's counsel attacked the replying submissions by the respondent's counsel. He contended that, her arguments are worth consideration in the merits of the intended appeal. What the applicant did in his submissions in chief was only to pin point the illegalities on the face of record that can satisfy the court to extend the time. He further argued that, the fact that it is not shown (on the face of record) that the applicant was accorded a chance to show cause as to why her registration should not be cancelled, was an example of the irregularities.

I have considered the applicant's affidavit, the counter affidavit, the submissions by the parties and the law. In my view, the respondent's counsel correctly highlighted the law on extension of time. An applicant must in fact, adduce sufficient reasons before the application for extension of time is granted.

The issue for determination in the matter at hand is therefore, *whether or not the applicant adduced sufficient reasons for this court to grant the prayed extension of time*. The applicant has basically founded her application on three reasons as shown above. The first reason is related to the doctrine of technical delay. The second is that, the impugned decision was vitiated by illegalities. The third reason was shown under paragraph 11 of the affidavit supporting the application. The paragraph states that, the applicant's delay was also caused by lack of information on the part of the applicant regarding the posting of the letter by the respondent. I will firstly test the ground on technical delay.

Regarding the doctrine of technical delay, I agree with the applicant's counsel on the stance of the law. It provides that, where the doctrine of technical delay is applicable, such delay is excusable and constitutes a sufficient reason for granting the prayed extension of time. In the matter at hand, and according to the attached proceedings in which the order for striking out the appeal is contained, the exact reason for striking out the appeal was not shown. The record only shows that, the applicant's counsel prayed for the appeal to be struck out for violating rules 29- 31 of the Labour Court Rules. In his submissions before this court, he did not also specify the reasons for the striking out of the said appeal. The respondent's counsel did not also state such reasons in her replying submissions.

It must be firstly noted that, the principle of technical delay has been applied in various precedents of the CAT and this court apart from those cited by the applicant's counsel in support of the application. The pertinent precedents by the CAT include the following: **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006, CAT at Dar es Salaam** (Unreported), **Yara Tanzania Limited v. DB Sharpriya and Co. Limited, Civil Application No. 498 of 2016, CAT at Dar es Salaam** (unreported), **Zahara Kitindi and another v. Juma Swalehe and 9 others, Civil Application No. 4 of 2005 (unreported)** and **Bharya Engineering and Contracting Co. Ltd v. Hamoud Ahmad @ Nassor, Civil Application No. 342/01 of 2017, CAT, at Tabora** (unreported).

In my concerted view therefore, and according to the precedents cited earlier, the principle of technical delay essentially guides that; where a party timely files an appeal or any other matter in court, but the

court strikes it out for incompetence, then there will be a sufficient reason for granting the prayed extension of time to file a competent matter out of time for seeking the same orders or remedies that had been sought in the previous matter which was struck out, provided that, the affected party/applicant promptly moves the court for the extension of time upon the order for striking out the previous matter being made.

In the matter at hand, I hastily find that, the applicant promptly filed this application within 3 days from when the previous appeal was struck out. I consider this period as implying the punctuality of the applicant due to her own nature. According to the record, she operates all over the country as hinted earlier, and the matter at hand was filed here in Mbeya. The respondent did not also contend that, this period of 3 days was an inordinate delay under the circumstance of the case. Again, as I have hinted earlier, the order by this court did not specifically state the reason for striking out the appeal. However, that does not matter in my settled view, as long as it is not disputed that the appeal was actually, struck out for incompetence. What matters is that, there is an order of this court striking out the appeal, dated 30/03/2020. All the conditions for applying the doctrine of technical delay set in the precedents cited previously were thus, met in the matter at hand. I thus find that, the doctrine of technical delay applies to the matter at hand, and it does so in favour of the applicant.

The finding I have just made above on the doctrine of technical delay, makes it unnecessary to consider the rest of the grounds of this application. This is because, the finding is capable of disposing of the entire matter. Considering those other grounds will amount to performing a superfluous or academic exercise. This is not a core

objective of the adjudication process like the one I am currently performing. Consequently, the issue posed herein above is answered affirmatively that, the applicant has adduced sufficient reasons in the matter at hand for this court to grant the application.

I accordingly grant the application. The applicant shall file the appeal within 15 days from the day hereof. I make no order as to costs since this is a labour matter. It is so ordered.


J.H.K. UTAMWA

JUDGE

12/05/2021

12/05/2021.

CORAM; JHK. Utamwa, J.

Applicant: Mr. Meshack L. Kapange (applicant's Secretary General).

Respondent: Mr. Joseph Tibaijuka, State Attorney.

BC; Ms. Patrick Nundwe, RMA.

Court: ruling delivered in the presence of Mr. Meshack Lupakisye Kapange (the applicant's Secretary General) and Mr. Joseph Tibaijuka, learned State Attorney for the respondent, in court, this 12th May, 2021.




JHK. UTAMWA.

JUDGE.

12/05/2021.