

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT MWANZA

MISC. LABOUR APPLICATION NO. 52 OF 2020

(Arising from decision of the High Court of Tanzania in Labour Revision No. 109 of 2019 before Hon. A. Z. Mgeyeka, Judge. dated 26/02/2020)

FORTUNATUS CLAVERY MAGAI APPLICANT

VERSUS

A & E SECURITY LIMITED RESPONDENT

RULING

31/05/2021 & 22/06/2021

W. R. MASHAURI, J;

This is an application for leave to file both notice and application for review out of time.

The application has been made under Rule 55(I), 56(I)(3) of the labour court Rules GN. No. 106 of 2007.

The reliefs sought by the applicant from this court are that: -

- (a) This court be pleased to grant to the applicant leave to file both notice and application for review out of time.

(b) That, any other relief this court may deem fair and just to grant.

The applicant is represented by Mr. Samwel Mahuma learned counsel and the applicant by Mr. Dutu Chengwa learned counsel. The application is supported by an affidavit deposed by Mr. Samwel Lazaro Mahuma learned counsel for the applicant.

When this application was called in court for hearing on 31/05/2021, Mr. Samwel Lazaro Mahuma learned counsel for the applicant contended as well as he does in his affidavit that, the applicant who is a lay person was not dissatisfied with the decision of this court in Labour Revision No. 109 of 2019. He has therefore knocked the door of this court. So as to get his right. That, upon lost his case in Labour Revision No. 109 of 2019 the applicant had no money to file his notice and application for review in time. That, in the process, he delayed to file notice and application for review in time because being a lay person, he started seeking for assistance from the office of the Region Commissioner who directed him to consult the lawyers society which has directed him to represent the applicant in this matter.

That, the applicant delayed to file notice and application for review because soon after lost his case in Labour Revision No. 109 of 2019, he became busy looking for assistance by the lawyers society.

To back up his submission, the learned counsel for the applicant cited the case of **Fortunatus Masha v/s William Shija** Civil Appeal No. 154 of 1997 CAT in which the Court of Appeal of Tanzania held that: -

"a distinction shall be made between actual delay and technical delay. The applicant was making efforts to pursue a review but time lapsed"

On that account, and by so doing, the applicant was making efforts to pursue a review. He started to the office of the Regional commissioner and later to the lawyers society, hence delayed to file both notice and application for review. Another reason for filing a review is that, his application has overwhelming chances of success. The allegation against him that he was not attending work is not correct. It is in evidence that, there is a book and/or a register of handing over the site as well as the attendance register.

That, upon conducting legal research he discovered that, there were illegalities which cannot be cured unless this court enlarge time for him of filing review in which the court will deal with some issues as: -

- (a) Whether the evidence on handing over the book which is in different duty stations to prove that the applicant was absent from work.

(b) That, whether evidence was sufficient enough to prove that, the applicant was absent from work.

In reply to the submission by counsel for the applicant, Mr. Dutu Chengwa counsel for the respondent submitted that upon learned from the submission by counsel for the applicant that the applicant's delay was due to the fact that the applicant is a lay person and the 2rd reason is illegality whereas the 3rd reason is reflected at paragraphs 3, 4, 5, 6, 7 and 8 of the affidavit. That, being a layman is not a good reason for delay. It is stated at paragraph 4 of the affidavit that he delayed following the outbreak of Covid - 19 decease which caused him to stay home for safety purposes and at para 5 of the affidavit is stated he delayed because he is a layman and therefore he went to the office of the Regional Commissioner and later to the lawyers society seeking for assistance.

That, the two paragraphs being sworn evidence given by counsel for the applicants is a contradictory evidence. It is therefore not known if the delay was because of the outbreak of Covid – 19 or because the applicant is a layman. That, what the applicant deposed in his affidavit are actually mere statements full of uncertainties. The learned counsel for the respondent also

cited the case of **Ally Kinanda & 3 Others v/s R** Criminal Application No.... of 2016 CAT (unreported) in which the CAT held at page 6 that:

"Ignorance of law is not sufficient cause for extension of time."

That, the 2nd reason complained of by the applicant in paragraph 9 of the affidavit is illegality. That, an illegality must be a reason for delay if the same is apparent on the face of the record. What the applicant complained in his affidavit is the evidence on record. That is not an illegality. An illegality must be apparent on the face of the record, for example, jurisdiction of the court, if the matter is time barred and not failure to analysis evidence. That the valambya case cited by counsel for the applicant is distinguishable to this case because in that case.

The issue is whether the reasons for delay given by the applicant is reasonable.

The reasons for delay given by the applicant are, ignorance of law, and illegality.

In law, an ignorance of the law of which everyone is bound to know does not afford excuse. Therefore, the argument by the applicant's counsel that the applicant is layman and he delayed because he was looking for legal

assistance in various institutions including the office of the Regional Commissioner and the lawyers society do not afford excuse, neither, the delay is technical because the matter was not in court. The delay therefore was actual of which the applicant is duty bound to account for even if the delay was for a single day (see the case of **Tanzania Fish Processing Ltd v/s. Eusto Ntagalinda** Civil Application No. 41 of 2008 CAT MZA Registry (unreported)).

Furtherstill, it is sworn by the applicant in his affidavit that, he delayed to file notice and application for review because there was an outbreak of Covid – 19 and again because he was busy looking for legal assistance in the office of the Regional Commissioner as well as in the office of the lawyer's Society. This evidence by the applicant in his sworn affidavit is contradictory. In law, when a witness contradicts himself, his evidence should be treated unreliable and un worth of consideration.

In the event, I dismiss the applicant's application for want of good reason. No order as to costs is made.



W. R. MASHAURI

JUDGE

22/06/2021

Date: 22/06/2021

Coram: Hon. W. R. Mashauri, J

Applicants: 1st, 2nd and 3rd

Respondent:

B/c: Elizabeth Kayamba

Mr. Emmanuel John, Advocate I appear for the applicant. I also hold brief of Mr. Dutu, Advocate for the respondent. We are ready for ruling.

Court: Ruling delivered in court in presence of Mr. Emmanuel John, advocate for the applicant also holding brief of Mr. Dutu advocate for the respondent this 22/06/2021. Right of appeal explained.




W. R. MASHAURI

JUDGE

22/06/2021