

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**LABOUR DIVISION**

**MISC. LABOUR APPLICATION NO. 42 OF 2020**  
*(Originating from Execution Application No. 12/2020)*

**CHARLES BWANAKUNU.....APPLICANT**  
**VERSUS**  
**BULYANHULU GOLD MINE LTD..... RESPONDENT**

**RULING**

*17<sup>th</sup> August & 10<sup>th</sup> September, 2021*

**MKWIZU, J**

This is an application for extension of time to file an application for revision against a ruling in an execution proceeding in Execution case No 12 of 2020 delivered on 27/8/2020 under the provision of Rule 56 (1) of the Labour Court Rules GN. 106 of 2007 supported by the affidavit by the applicant.

At the hearing, the applicant was represented by Mr. Dustan Mujaki, learned Counsel whereas Mr. Imani Mafuru, also learned advocate appeared for the respondent.

Arguing in support of the application, Mr. Mujaki stated that, the reason for the delay to file the intended application are in paragraph 4 of the affidavit. He said, ruling in an execution application was handed down on 27/8/2020, applicant was aggrieved but could not file revision thereon because

immediately after the delivery of the said ruling, on the same date, applicant fell sick, he was on 28/8/2020 admitted at the hospital for prostate cancer operations and was discharged on 12/9/2020 with a total bed rest directive as indicated in the discharge form attached into the affidavit in support of the application.

It was Mr. Mujwaki's further submissions that, the application was filed 28 days after applicants had recovered from sickness. He said applicant was not negligent, he promptly came to court after his recovery. He referred the court to the case of **Msoud Said Selemani V Republic**, Criminal Application No. 22/7/2018 praying to have the application granted.

Responding to the application, the respondent's counsel submitted that, the applicant has no good reason for allowing an application for extension of time. He argued that, much as the ruling by the Registrar was delivered on 27/8/2020, applicants' revision was supposed to be filed on 26/10/2020, however, he delayed and the current application was filed on 23/12/2020 after the lapse of 118 days. It was Mr. Mfuru's contention that, the medical report relied upon by the applicant as proof of sickness indicates that applicant was admitted at the hospital on 28/8/2020 to 12 /9/2020, the same medical report indicates that applicant was given one month's total bed rest meaning that the bed rest was ending on 13/10/2020 while applicant was still within time to file revision but for reasons known to himself and negligently, applicant filed this application on 23/12/2020 almost 71 days after the bed rest period.

Mr. Mafuru cited to the court the case of **Dar es Salaam City Council V. S Group Security LTD**, Civil Application No. 234 of 2015 stating that in an application for extension of time each day of the delay must be accounted for. To him, applicant failed to account for the period between 13/10/2020 after the lapse of the one month's bed rest period to the filing of this application. He argued that, the reason of sickness advanced did not cover this period. Reference was made to **Deus Moris Alexander V. Sandvick Mining & Construction Ltd**, Revision No 14 of 2011. He generally prayed for the dismissal of the application.

In rejoinder Mr. Mujaki submitted that, the total bed rest specified to the applicant had no time limit. He was given total bed rest until recovery.

On failure to file the application immediately after the recovery, Mr. Mujaki stated that, the application was ready by 23/11/2020 when it was signed by the applicant's counsel but they were unable to file the same due to technical problems caused by E-filing process whereby the system was refusing to accept the documents filed through Shinyanga High court until directed to filed through Shinyanga Registry. On the accounting for each day of the delay, Mr. Mujaki said, applicant was in medication in all the days of the delay and therefore he managed to account for the days of the delay.

I have passionately considered the application, parties' submissions and court records, the issue for determination is whether the applicant adduced sufficient reasons for the court to allow this application. The court's power to extend time on applications of this nature is derived from Rule 56 (1) of the Labour Court Rules, where it is provided that such powers may only be

exercised upon good cause shown. This position was discussed in the case of **Blue Line Enterprises Ltd Vs. East African Development Bank**, Misc. Application No. 135 of 1995, among others where the court said;

*"...it is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, **upon sufficient cause being shown which has to be objectively assessed by Court.**" (emphasis added).*

Illustrating on what sufficient cause entails, Court of appeal in **Felix Tumbo Kisima Vs. TTC Ltd and Another** [1997] TLR 57, observed that;

*"it should be observed that the term "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation **to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary steps.**" (Emphasis added).*

In the instant application, the ruling by the deputy registrar was delivered on 27/08/2020 and the present application was filed on 23/12/2020. As rightly submitted by Mr. Mfuru, a person aggrieved is supposed to file an application for revision within 42 days from the date of the decision. This is

in accordance to section 91 (1) (a) (b) of the Employment and Labour Relations Act [CAP 366 RE 2019].

This application was filed almost 118 days after the decision of the registrar. This delay however had explanations. Paragraph 4 and 5 of the affidavits in support of the application as well as the counsels' oral submissions raises sickness as a reason for delay. Respondent's counsel is of the view that the reason given covers the period from 28/8/2020 to 13/10/2020 only and the rest of the days from 13/10/2020 to 23/12/2020 is not accounted for. This gap comes in due to difference in interpreting the medical report attached to the application. While the applicant's counsel argued that the total bed rest allowance given to the applicant was until recovery, meaning that it was without time limitations, respondent's counsel interpreted it to mean that the total bed rest was for a one month period after the discharge and no more.

I have perused the medical report attached to the affidavit in support of the application. Indeed, the bed rest given to the applicant was for a period of one month. The medical report partly reads:

*"...under above Management and total bed rest and close observation for 1/12 then back for checkup"*

The above statement suggests that the applicant was given an allowance of one month's total bed rest. That being the case, the total bed rest, would have ended on 13/10/2020. Thus, the period from 13/10/2020 to

23/12/2020, is not account for. Rejoining, Mr. Mujaki had two points, first that the total bed rest period had no limitation, it was until recovery. He, however did not come clearly on this point as to when exactly his client recovered for purposes of pursuing his matter before the court of law. Secondly, Mr. Mujwaki argued that the application was ready for filing since 23/11/2020 the date the application was signed but due to technical problems with the E filing systems they could not managed to file it in time. I regret to say that, this statement though very vital in supporting the applicant's application, it is was made just from the bar. No such statement was made in the affidavit nor explained during submissions in chief. If really that was the position, Applicant was supposed to have so deposed in his affidavit with a proof of an affidavit from the court officer who dealt with the matter in rectifying the alleged technical fault. Applicant's counsel also was expected to have addressed the point during his submissions in chief. In **Tanzania Sewing Machines Company Limited v Njake Enterprises Limited**, Civil Application No. 56 of 2007 Court of Appeal of Tanzania at Dar es salaam (unreported) which cited the case of **Ratman v Cumarasamy and Another** (1964) ALL E.R. 933 at page 935 where it was held that:

*"the rules of Court must prima facie be obeyed and, in order to justify a Court in extending time during which some steps in procedure require to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise any party in breach would have an unqualified right to extension of time which would defeat the purposes of the rules which is to provide a timetable for the conduct of litigation..... Rules are made to be followed..."*

I do not find any material facts upon which this court could judiciously act towards extending the period requested for by the applicant. As rightly submitted by the respondent's counsel, the period from 13/10/2020 to 23/12/2020 is not accounted for leading to the refusal of the application as I hereby do. Order accordingly.

**DATED** at **SHINYANGA** this **10<sup>th</sup>** day of **September, 2021.**

  
**E. Y. MKWIZU**  
**JUDGE**  
**10/09/2021**

**COURT:** Right of appeal explained.

  
  
**E. Y. MKWIZU**  
**JUDGE**  
**10/09/2021**