

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA AT DODOMA
DISTRICT REGISTRY
AT DODOMA**

MISC. LABOUR APPLICATION NO. 22 OF 2020

(Originating from Labour Revision 18 of 2017 delivered on 31/12/20)

COCACOLA KWANZA.....APPLICANT

VERSUS

PAULO KINGU AND 4 OTHERS.....RESPONDENT

RULING

Date of last order: 25.08.2021

Date of Ruling; 10.09.2021

A. Mambi, J.

This Ruling emanates from an application filed by the applicant. In its application supported by an Affidavit. The applicant filed an application (**MISC. LABOUR APPLICATION NO. 22 OF 2020**) for an application for an extension of time to file application to file an appeal this court out of time. The applicant filed an application for extension of time to file application for leave to appeal to the Court of Appeal out of time to challenge the decision of this court. In its application, the applicant has prayed to this court to grant leave for his

application. The application is supported by an affidavit where the applicant has stated its reasons for his delay.

During hearing, the applicant was represented by the learned Counsel Mr Komba while the respondents were represented by Mr. Jamal, the learned Counsel.

In his submission the applicant counsel briefly submitted that their reasons for this application is based on the point of illegality. The applicant briefly argued that the applicant have indicated the reasons for the delay in its affidavit. He argued that the illegality are on the records and jurisdiction that need to be clarified by the court of appeal. He averred on of the point of illegality is on the failure of the Hon Judge to properly define the place of termination of an employment that is whether Dodoma or Dar Es Salaam. He was of the view that it is only the Court of Appeal that can which can determine the jurisdiction of the court as to whether the High Court of Dodoma has jurisdiction to deal with dispute of employees employed in Dar but misbehaved in Dodoma. He referred the decision of the court in *Eliyas vs Singita Grumeti Reserve Labour Revision No.38 of 2013* at page 4.

In response, the respondent Counsel contended that the application has no merit since the affidavit does not clearly disclose the reason for the delay. He argued that the applicant is just delaying the matter since he has no reason for his delay. He was of the view that there is no point of illegality to

be determined by the Court of Appeal. He was of the view there is point illegality since this court had jurisdiction.

I have considerably perused the application supported by an affidavit. I have also keenly considered the submissions made by both parties to find out whether this application has merit or not. The main issue to be determined is whether the applicant has properly addressed this court in his application. Having gone through the application by the applicant, I found the applicant properly filed its application for extension of time to file an application for leave to appeal to court of appeal. The applicant in its affidavit has raised the point of illegality on the jurisdiction of this court.

In other words, the main legal question to be determined is whether the applicant has properly moved this court in its application and whether there are any good causes for its delay or not. It is trite law that any party seeks for an extension of time to file an appeal or application out of time he is required to advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law with and case studies. In this regard, I wish to refer the decision of the Court of Appeal of Tanzania in **REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)**. The court in this case observed that;

“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.

In other words, in determining an application for extension of time, the court has to determine if the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. The court needs to consider an issue as to whether the applicant in his affidavit have disclosed good cause or sufficient reasons for delay. In other words, the court needs to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to shown such reasons were operated for all the period of delay.

I also wish to refer the decision of the court in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 Court of Appeal of Tanzania at Dar es Salaam (Unreported) underscored that;

“Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

(a) The length of the delay

(b) The reason of the delay – whether the delay was caused or contributed by the dilatory conduct of the applicant?

*(c) Whether case such as whether there is a point of law or the **illegality** or otherwise of the decision sought to be challenged.”*

Worth also at this juncture referring the decision of the court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP**; Misc Commercial Cause No. 243 of 2015 (Unreported) where it was held that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause...”

Looking at the application before this court, the applicant in his affidavit has clearly indicated that he had sufficient reasons for his delay. It is clear from the affidavit and other records that the applicant has clearly stated the sufficient reasons based on technical delay and illegality on the decision of the trial tribunal.

My perusal from the records especially affidavit and submission have revealed that the applicant has established that there is a point of law or the illegality as indicated under paragraphs 4, 5, and 6 of its affidavit. It is trite law that where the applicant clearly establishes the point of illegality the court need to grant an extension of time basing on that reason. In my view the point of illegality on jurisdiction is the point of illegality that can be better addressed by the court of appeal. See **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI (Supra)**.

Indeed, the question as to what it amounts to “sufficient cause” was underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007**, where the court observed the following:-

“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means

the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules”(emphasis supplied).

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

“What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant”.

Reference can also be made to the decision of Court of Appeal in **MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998** in which the court at **Page 425** held that

“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents’ delay does not constitute a case of procedural abuse or contemptuous default and because the applicant” will not suffer any prejudice, an extension should be granted.

The argument by the respondent that the applicant has failed to show sufficient reasons in his affidavit has no merit. I agree with the applicant Counsel that the applicant has advanced and presented sufficient reasons for delay and the extent of such delay in his application and he has also indicated that there is a point of law on illegality involved

I agree with the applicant that he has advanced and presented sufficient reasons for delay and the extent of such delay in his application. I also wish to refer the Law of Limitation Act. The relevant provision is section 14 (1) of the Law of Limitation Act Cap.89 [R.E. 2019] which provides as follows:-

*"14-(1) Notwithstanding the provisions of this Act, the court may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for such execution of a decree, and **an application for such extension may be made** either before or after the expiry of the period of limitation prescribed for such appeal or application (emphasis mine)".*

I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to file an application for leave to appeal to the court of appeal out of time. This means that the applicant has to file its application to this court if he wishes to do so. The applicant shall file its application for to this court within 21 days from the date of this ruling.



A handwritten signature in black ink, appearing to read 'A. J. Mambi', is written over the judge's name.

A. J. MAMBI

JUDGE

10.09. 2021

Ruling delivered this 10th day of **September, 2021** in presence of both parties.



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A. J. MAMBI

JUDGE

10.09. 2021

Right of appeal explained.



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A. J. MAMBI

JUDGE

10.09. 2021