

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC APPLICATION NO. 22 OF 2022

*(C/f Miscellaneous Application No. 76 of 2020 at High Court of Tanzania at Arusha,
arising from execution order 98/2018 at High Court Tanzania at Arusha, Originating
from Complaint No.ARU/LAI/579/26)*

NGURUDOTO MOUNTAIN LODGE APPLICANT

Versus

LABOUR OFFICER RESPONDENT

RULING

Date of last Order:13-9-2022

Date of Ruling: 12-10-2022

B.K.PHILLIP,J

Before me is an application for extension of time to set aside a dismissal order, issued by this Court on the 2nd June 2021 in respect of Misc. Application No.76 of 2020.

The application is made under Rule 55 (1) (2) of the Labour Court Rules 2007 GN. No.106/2007, Section 14 (1) of the Law of Limitation Act,[Cap 89 R.E 2019] and Section 95 of the Civil Procedure Code ,[Cap 33 R.E 2019], supported by an affidavit sworn by Mr. Edmund R. Ngemela, counsel for the applicant. Mr. Emmanuel R. Mweta, the Labour Officer swore a counter affidavit in opposition to the application and appeared in Court in person.

Before going to the arguments raised by the parties, let me give a brief background to this application , albeit briefly. The Court's records reveal that in October 2020, the applicant herein filed in this Court application No.76 of 2020, praying for extension of time for filing application for Revision against the decision of the Labour officer in Complaint No.ARU/LAI/579/26. On the 2nd June 2021, this Court (Hon. K.N.Robert ,J) dismissed the aforesaid application No.76 of 2020 for non-appearance of the parties because none of the parties had ever entered appearance in Court . Consequently, on 22nd April 2022 the applicant filed the instant application.

Now , back to the application at hand, the application was disposed of by way of written submission. Mr. Ngemela started his submission by adopting the contents of his affidavit in support of the application and the reply to the respondent's counter affidavit. He went on submitting that he filed applications Nos.75/2020 and 76/2020 simultaneously and was informed that both applications were assigned to Hon.Robert J , but later on he learnt that Application No. 75/2020 was re- assigned to Hon. Gwae J. He was not aware that Application No. 76/2020 was not re-assigned, that is, it remained before Hon. Robert J and was not informed when it was scheduled for hearing. Moreover, he contended that the Court Clerk could have notified him the hearing date either by calling him or sending him a message because his mobile number was indicated in the application.

In addition to the above, Mr. Ngemela argued that it is important for the extension of time sought in this application to be granted to enable the applicant to file an application for restoration of the said

application No.76 of 2020, so that at the end of the day the applicant will be able to challenge the compliance order issued by the Labour officer in Complaint No. ARU/LAI/5/9/26 which is full of irregularities. The irregularities pointed out by Mr. Ngemela are; that the respondent issued the compliance order whereas the applicant strongly disputed to have ever employed the persons mentioned in the compliance order and that the applicant was denied the right to be heard. Mr. Ngemela beseeched this Court to grant this application.

In rebuttal, the Labour officer adopted the contents of his counter affidavit and went on submitting that Mr. Ngemela's contention that he was not aware of the hearing date of Application No. 76/2020 is immaterial and baseless since he was the one who filed that application. He was duty bound to make a follow up of his application. He contended that Mr. Ngemela abandoned the said application since he has not provided any prove that he made any follow up of that application either to the Registrar or Judge in charge. By the time this Court dismissed the said Application No. 76/2020 seventeen (17) months had lapsed from the date it was filed in Court, argued Mr. Mweta.

With regard to Mr. Ngemela's allegations that the Compliance Order is full of irregularities, Mr. Mweta argued that the allegedly irregularities cannot be a justification for this Court to grant the order sought in this application. To cement his argument, he cited the cases of **Shehan Tanzania Vs Colletha Simon Chaganike, Misc. Labour application no.186 of 2020** and **Maduhu Thomas Ilanga Vs National Microfinance Co. ltd, Misc. application No.22** (Both

unreported). In conclusion Mr. Mweta submitted that the applicant has not adduced sufficient cause to move this Court to grant this application. Mr. Ngemela did not file a rejoinder submission.

Upon making analysis of the submissions made by Mr. Ngemela and the Labour officer as well as perused the Court's records, I am of settled opinion that the task of this Court is determine whether or not the applicant has adduced sufficient cause to move this Court to grant the extension of time sought since there is no dispute that this Court has discretional powers to grant the order sought by the applicant. Explaining the position of law I think is a good starting point. The position of the law is that in an application for extension of time , the applicant is supposed give good cause for the delay and account for each day of delay. There is no hard and fast rule on what amounts to good /sufficient cause. However, our Courts have lied down some factors which are normally taken into consideration in determination on whether or not the reasons adduced by the Applicant are good causes for the delay. The following are among the factors established by our Courts;

- i. The Applicant must account for all the period of 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.

[Also, see the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustee Young Women's Christian**

Association of Tanzania, Civil Application No.2 of 2010 (unreported)] .

In addition to the above, it is noteworthy that the discretionary powers conferred to this Court have to be exercised judiciously. At this juncture I would like to associate myself with the findings of this Court in the case of **Isabella John Vs Silverster Magembe Cheyo and three others, Commercial Case No. 49 of 2003**, (unreported) in which this court said;

*"Principles for the exercise of discretionary powers of the court , are now well established. Such powers must be used justly (see **Berry Vs British Tranport Commission**(1962) 1QB 306.)It must be exercised according to the rules of reasons and justices, not according to private opinion, humour.It must not be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself".*

As can be discerned from the Court's records, Application No.76 of 2020 was dismissed for want of prosecution on 2/6/2021 and this application was filed on 14/4/2022. I have noted that Mr. Ngemela have failed to disclose crucial information in accounting for the days of delay. In his affidavit in support of this application, Mr. Ngemela deponed that he became aware of the dismissal order on 3rd April 2022, that is, ten (10) months after issuance of the dismissal order. However, he neither explained what happened in those ten (10) months which prevented him from becoming aware of the dismissal order nor given any reason why it took him so long to know about the dismissal order and how did he get the information about the same.

In fact, Mr.Ngemela's submission and the facts deposed in his affidavit in support of this application depicts nothing than laxity in handling this matter. There is a plethora of authorities to the effect that Advocate's negligence has never been accepted by our Courts as a sufficient cause for delay. (See the case of **Umoja Garage Vs National Bank of Commerce (1997) TLR 109**). In short, in this application there is inordinate delay and the applicant has failed to account for each day of delay. Mr. Ngemela's contention that the Court Clerk could have sent him a message to notify him the hearing date of the aforesaid application No. 76/2020 because his mobile number was indicated in the application is unfounded since there is no such legal obligation to the Court Clerk. The correct position is that once a person files hi/her application in Court he/she is duty bound to make a make a follow of the same.

In addition, and without prejudice to my findings herein above, I wish to point out that I have taken into consideration Mr. Ngemela's argument that the Compliance Order is tainted with irregularities. I am alive that when an application for extension of time is premised on a point of illegality time should be extended even if the applicant fails to account for the days of delay, so as to give opportunity to the Court to ascertain the allegedly point of illegality and take appropriate measures to put the matter and record right. [See the case of **Principal Secretary , Ministry of Defence and National Services Vs Devram Valambhia, 1992, T.L.R. 185** and **National Oil (Tanzania) Limited Vs The Energy and Water Utility Regulatory Authority (EWURA) , Application No. 8 of 2011 (unreported)**] . However, in this application I have not seen any irregularity / point of

illegality in the Compliance Order which can move this Court to grant the extension of time sought. My stance stated herein above is based on the fact that in his submission Mr. Ngemela alleged that the Compliance Order was issued whereas the applicant disputed strongly to have employed the persons mentioned in the Compliance Order. Therefore, it means that the applicant was heard. Under the circumstances, there is nothing worth the term "illegality" for this Court to rely on in granting the extension of time sought in the midst of the inordinate delay I have elaborated earlier in this Ruling.

In the upshot, it is the finding of this Court that this application is devoid of merits and the same is hereby dismissed. This being a labour case, each party will bear his own costs.

Dated this 12th day of October 2022




B.K.PHILLIP

JUDGE