

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

MISC. LABOUR APPLICATION NO. 56 OF 2021

(Originating from CMA/ARS/ARS//73/2021)

HAMADI JUMA KAYEWA APPLICANT

Versus

NOMAD TANZANIA RESPONDENT

RULING

29th August & 21st October 2022

Masara, J.

The Applicant in this Application is moving the Court to allow him an extension of time so as to file an application for revision against the ruling of the Commission for Mediation and Arbitration for Arusha ("the CMA") made in Labour dispute No. CMA/ARS/ARS/73/2021, which was delivered on 14/07/2021. The Application is supported by the affidavit deposed by Mr Frank Wilbert Makishe, learned advocate. The Respondent opposed the Application through a counter affidavit deposed by Ms Nathalia Dabo, the Human Resources Manager of the Respondent.

The antecedent facts to this Application may be summed up as follows: the Applicant was the Respondent's employee. The records availed to me do not indicate what befell the employment contract but the Applicant's complaint is that the Respondent did not pay him his statutory benefits.

The Applicant intended to institute a claim of unfair termination against the Respondent in the CMA but, unluckily, he found himself out of time. He filed application No. CMA/ARS/ARS/73/2021 at the CMA seeking for condonation. On 14/07/2021, the application was dismissed on the account that the Applicant failed to adduce sufficient reasons for the delay. The Applicant intended to challenge that decision, but due to illness, he failed to file his application on time, hence this application.

At the hearing of the application, the Applicant appeared in Court in person, after Mr Frank Wilbert Makishe, advocate, withdrew from representing him for lack of instructions. The Respondent was represented by Mr Erick S. Stanslaus, learned advocate. The Application was disposed of through filing of written submissions.

Submitting on the substance of the application, the Applicant contended that he delayed from filing application for revision because he fell sick and was hospitalized from 06/07/2021 until on 20/07/2021 when he was discharged. He also stated that he continued attending clinic from the time he was discharged until 20/11/2021 when he fully recovered. He thus urged the Court to allow the Application.

On his part, Mr Stanslaus opposed the Application contending that the Applicant ought to have filed his application for revision by 26/08/2021,

that is when the 42 days would have lapsed. Counting from that date therefore, it was counsel's submission that the Applicant delayed for 99 days. He stressed that in applications of this nature, the Applicant is duty bound to account for each day of the delay. To support his contention, he relied on the case of **Said Ramadhan vs Geita Gold Mining Ltd, Misc. Application No. 29 of 2013**. He maintained that the Applicant has accounted for only 87 days, that is from 06/07/2021 up to 20/11/2021, but the period between 20/11/2021 when the Applicant fully recovered to 02/12/2021 when this application was filed was not accounted for.

Mr Stanslaus added that there was no proof to support the assertion that the Applicant was admitted and was attending clinic on the said dates and that the Respondent inquired from the said hospital and was informed that the Applicant was not their patient at the material time. It was his conclusion that the Applicant has failed to prove that it was illness that prevented him from filing the application on time. To reinforce this, he referred to the case of **Geofrey Mhundilwa vs the General Secretary East Lake Victoria Diocese, Revision Application No. 35 2011**. He urged the Court to dismiss the application.

From the submissions of the parties and the rival affidavits filed both in support and against the Application, the task before me is to determine

whether the Applicant has furnished sufficient cause for the delay to warrant the extension of time sought.

Principally, granting an extension of time for a party to do an act that ought to have been done within a specific period is entirely in the discretion of the Court. However, it has been cautioned that such discretion is judicial; thus, it must be exercised according to the rules of reason and justice and not arbitrarily. The guiding principles in considering whether to extend time or not are abound in this Court and the Court of Appeal decisions. For instance, in the case of **Ngao Godwin Losero vs Julius Mwarabu, Civil Application No. 10 of 2015** (unreported), the Court of Appeal quoted with affirmation the decision of the defunct Court of Appeal for Eastern Africa in the case of **Mbogo vs Shah [1968] EA 93** which held thus:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

Now the question is whether the Applicant is covered by sufficient cause above exemplified. As earlier pointed out, the reason for the delay is canvassed under paragraph 7 of the affidavit in support of the application.

The main reason for the delay is that the Applicant fell seriously sick and was hospitalized from 06/07/2021 and discharged on 20/07/2021. The discharge form was annexed to the affidavit. It clearly shows that the Applicant was admitted on 06/07/2021 at Katavi Referral Hospital and was discharged on 20/07/2021. It has been established that sickness constitutes sufficient ground for delay, once proved. See the Court of Appeal decision in **John David Kashekya vs the Attorney General, Civil Application No. 1 of 2012** (unreported).

The Applicant further contended that he was attending clinic from the date of his discharge until 20/11/2021, when he fully recovered. However, he did not produce proof to support the same. Attending clinic for almost four months cannot be proved by mere words. There ought to be some kind of record which will show that the Applicant was truly attending clinic and his health status would be on record. In the absence of any record from the said hospital that the Applicant was attending clinic from 20/07/2021 to 20/11/2021, the Court is left with no material upon which it can rely to grant the extension of time sought.

The principle that sickness constitutes sufficient cause for the delay, is corollary on another principle which directs that the delay has to be a direct consequence of the sickness. In this respect I am fortified by the

Court of Appeal decision in **Juto Ally vs Lukas Komba and Another,**
Civil Application No. 484/17 of 2019 (unreported), that:

*"Indeed, she has also not explained how her illness contributed to the delay **as the medical evidence she attached to her affidavit concerns the period specifically for the dates when she attended to hospital on 8th October, 2016 and 19th June, 2016. Besides, there is no indication that on those particular dates she was admitted and for how long. The only indication is that she attended at Mwananyamala Hospital as an outpatient where she was attended and allowed to go to her residence on both occasions.**"*(Emphasis added)

I need say no more than what the Court of Appeal stated. I see no proof that after the Applicant was discharged from hospital, he continued attending clinic on the said dates. On the other side, there is a letter from Katavi Referral Hospital dated 23/12/2021 stating that the Hospital has no records to support that the Applicant was admitted there or that he was attending clinic thereat. In his submission, the Applicant seems to deny that letter stating that it is subject to proof by evidence. I partly agree with him. However, even if the same is not considered, the fact that there was unexplained delay remains unperturbed.

Ordinarily, in extension of time cases, it is upon the Applicant to account for each day of the delay. As pointed out by the Respondent's counsel,

even if I was to buy into the justification put forth about attending clinic for the four months (which I do not), the Application will not be sustained as there is no explanation of the 12 days delay between 20/11/2021 and 02/12/2021 when the application was filed. I take note that the Applicant has not been steadfast to pursue his rights, if any. Tracing back to the application that was dismissed at the CMA, it is manifestly clear that the Applicant displayed lack of seriousness and diligence. That attitude cannot be condoned by our Courts. Disputes are bound to be litigated upon within a reasonable period so that parties can proceed with other endeavours. Condoning laxity is tantamount to punishing the other side and preventing them from pursuit of their daily undertakings

In the totality of the foregoing, the Applicant has failed to demonstrate sufficient reasons for the delay. This application is bound to fail. It is dismissed in its entirety. Due to the nature of the matter, I direct each party to bear their own costs.

Order accordingly.




Y. B. Masara

JUDGE

21st October 2022