

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

MISC. LABOUR APPLICATION No. 51 OF 2022

LETSHEGO BANK (T) LIMITED.....APPLICANT

VERSUS


EMMANUEL ALOYCE BASSO.....RESPONDENT

RULING

29th September & 27th October 2022

TIGANGA, J

This ruling is in respect of an application for extension of time filed by the applicant herein praying for extension of time for setting aside dismissal order in Labour Revision No. 127/2021 issued by this Court on the 9th May 2022. This application was preferred under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019] and Order IX Rule 9 of the Civil Procedure Code, [Cap 33 R.E 2019]. By way of chamber summons and an affidavit sworn by Mr. Erick Kanga, learned counsel for the applicant this court was moved to grant the prayer sought. In the affidavit, the grounds for the application and the reasons for delay were stated.

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The application was contested by counter affidavit of the respondent in which the points of opposition were stated. Hearing of the application proceeded orally.

The submission made in support of the application were to great extent elaborating the contents of the affidavit and the reply to the counter affidavit. That being the case I will not reproduce the contents of the affidavit, but will consider the same along with the submission made in support thereof. Submitting in support of the application, Mr. Erick Kanga learned Counsel, started by praying to the adopt the affidavit in support of the application as part of his submission in chief.

He submitted that as stated in paragraphs 7 and 8 of the affidavit, on 09th May 2022 when the revision was dismissed, the learned counsel was sick due to surgery he underwent in the year 2021, therefore he was unable to attend before the Court and had nobody to hold his brief during his absence. He communicated with the applicant who unfortunately was very far He could not attend. He further submitted that he informed the respondent that he was sick.

According to Mr. Kanga, as he came out of the hospital he was called by the respondent who told him that they had to receive a settlement deed from his client. He further submitted that on the material date, he was coming to submit what they discussed, unfortunately, when he communicated with the applicant he told him that the matter was adjourned till 12th July 2022, hence he was late to know that there was dismissal of the matter hence he was late to file the application in court.

He insisted that he became aware that the revision was dismissed on 12th July 2022 when he was appearing before the Court pursuant to what he was informed by the applicant. He realized that on 12th July 2022 it was fixed in respect of the execution proceedings. After such discovery, he took initiative of having the order of the Court which he secured in three days, by then, the 30 days within which to file an application to set aside had already been expired. Mr. Kanga contended that he prepared the application and filed it on 16th July 2022, online. He referred this court to authorities which held sickness to be good cause for extending time. In that regard, he relied on the case of **Anamaria Joseph vs Onesmo Bisen**, Misc. Civil Application No. 21 of 2021 and **Kioo Limited vs Burchard Kalunda**, Misc. Labour Application No. 12 of 2021. In both cited cases, it was held that sickness of

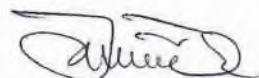
advocate is sufficient ground for extension of time. While aware that, his application is omnibus for preferring two distinct prayers in one application, he said that this procedure is not alien. In support of that stand, he cited the decision in the case of **The Attorney General vs MS Prime Assets (T) Ltd**, Misc. Land Application No. 366 of 2018, which held that in some circumstances where the prayers are interrelated, the two applications can be entertained together. In that case, like in the instant application, the application was for extension of time to file an application for setting aside the dismissal order. The court entertained them and granted them one after the other in the same application. He summed up his submission by praying this Court to grant the application because the applicant has high prospects of success. Since the application was dismissed the matter will seriously prejudice the interest of the applicant while on the other hand extension of time and setting aside the dismissal order if granted poses no danger or any prejudice to the respondent.

In reply submission learned Counsel for the respondent began with prayer that their counter affidavit be adopted as part and parcel of their reply submission. He further submitted that he contested the application due to the fact that the Applicant has not adduced good cause as to why he delayed

and hence this Court has to grant the application. He continued to submit that the evidence that the applicant was sick is full of contradictions as it shows that he underwent surgery five days ago. He also submitted that such contradictions go to the root of the matter. The learned counsel submitted further that the reason of sickness is not proved to the required standard because five days fall under the same month of 2022 not in the year 2021. He added that even though the Court believe that the counsel was sick, the notice of representation which is annexed to the counter affidavit as EB – 1, the applicant has a total of six advocates, there is no reasons as to why the rest of the advocates did not appear.

There is no where it has been stated in the affidavit the reasons that made the other advocates not to appear. He amplified that the fact that they did not appear without reasons denies them an opportunity for the extension of time. He further disputed the allegation that the applicant has communicated with the respondent. The counsel further submitted that from 9th May 2022 to 3rd August 2022 a period of more than 85 days had lapsed and the said days have not been accounted applicant counsel.

Although the applicant counsel was not diligent as he has personally stated it is more than 60 days from day the dismissal order, came to his

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knowledge. Therefore, he is not diligent since from 12th July when the revision was dismissed when the application was filed, he did not he was did not account for the three weeks delay.

He further contended that the allegation that the applicant filed this application online on 16th July 2022 as required by the procedure to the time he has submitted hard copy these facts are nowhere in his affidavit so the same ought not be regarded by the Court. Distinguishing the cases relied on by the applicant, he submitted that the applicant delayed for 41 days but he accounted for the days delayed, unlike in the present application where the delay is for 85 days but they were not accounted for. The learned counsel further submitted that he prays this court to dismiss the application with costs.

In rejoinder submission, the applicant reiterated his submissions in chief. That being the case, this Court found it unnecessary to make repetition of the said submission.

Looking at the application, the counter affidavit and the submission in support and against the application, I find the issue for consideration before

this Court is whether the applicant adduced good cause for extension of time to file application for setting aside the said dismissal order.

At the very beginning of my deliberation upon both parties' arguments, I wish to make it known that the fact that the application is an omnibus has not been challenged. Since that is not an issue in contention, I assume that the combination of the two applications does not in any way prejudice the respondent, therefore, I will proceed to determine the application on merits.

Applying the principle governing extension of time, the Court of Appeal in the case of **D.N Bahram Logistics Ltd Another vs The National Bank of Commerce Ltd & Another**, Civil Reference No. 10 of 2017 (unreported) decided on 04/04/2021 it was held *inter alia* that;

"It is settled that extension of time is a matter of discretion on the part of the Court and that such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case. Admittedly, it has not been possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion. Nevertheless, the Court has consistently looked at a number of factors such as the reasons for the delay, the length of the delay, whether the applicant was diligent, the degree of prejudice to the respondent if time is extended,

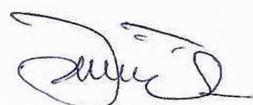
*to name but a few: see, for instance, **Dares Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987; and **Tanga Cement Company Limited v. Jumarine D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001"*

This means that there is no hard and fast rule as to what amount to good cause, though the above are criteria or guiding principles, but doors are not closed for the Court to consider other factors relevant depending on the facts of the case.

In the case of **Felix Tumbo Kisima vs TTCL Ltd and Another** [1997] TLR 57, the Court of Appeal 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 powers to control or influence resulting in the delay in taking necessary steps**" [Emphasis added]*

In this case it has not been disputed that before the matter was dismissed for want of appearance of the applicant, the parties were in negotiation. It seems after the dismissal the negotiation and discussion spirit of one party ended. In my view, where parties have opened negotiation to settle, they tend to relax the strict compliance of procedural rules. It is



unfortunately that on that belief the advocate did not make follow up to know what happened in Court on the date when the case was called in his absence. That laxity which may result into a total dismissal of the case will mostly affect the applicant but not the advocate personally. That being the case, I find the interest of justice requires the time be extended for filing the application for setting aside the dismissal order.

Having allowed the first limb, I now turn to the second limb, that is whether the applicant has given reasons sufficient to convince this court to set aside the dismissal order. On that respect the only ground submitted is that the advocate was sick on the date when the matter was dismissed. I find the applicant has attached to the affidavit the Medical report summary of the counsel showing that he was actually attended at Agha Khan Health Center Arusha. It is the law that in such circumstance the party taking refuge of sickness needs to strictly prove the sickness. In the application the applicant has proved that he was sick and therefore prevented by sickness to attend in court on 12th July, 2022. That being the case, I find that to be justified that the applicant has given reasons true the Court to consider and grant the order sought. That said, I allow the application, by setting aside the dismissal order, and consequently restore the dismissed Labour Revision

No. 127 of 2021. The same be put before the judge for continuation of hearing.

Order accordingly.

DATED at ARUSHA on the 27th October 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over the printed name.

J.C. TIGANGA,

JUDGE.