

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT ARUSHA**

MISC. LABOUR APPLICATION NO. 57 OF 2022

(Origin Labour Court Complaint No. CMA/ARS/ARB/28/2013)

NEEMA SIMON AND1ST APPLICANT
APOLINARY STEVEN.....2ND APPLICANT
NGEREZA KILALA.....3RD APPLICANT
MANCHESTER NURU.....4TH APPLICANT
CHRISTINA PHILIPO.....5TH APPLICANT
JOYCE ALPHONCE.....6TH APPLICANT
AUGUSTINO KOMBE.....7TH APPLICANT
JOSEPH MOWO.....8TH APPLICANT
MARTHA ALPHONCE.....9TH APPLICANT

VERSUS

NJAKE HOTEL AND LODGES LIMITED.....RESPONDENT

RULING

14/11/2022 & 5/12/2022

GWAE, J

The applicants named herein have been in the court's premises for quite a long period intending to pursue their revision application against

the award of the Commission for Mediation and Arbitration procured on 3rd July 2013.

According to the applicants' application accompanied with their joint affidavit and annexures therein the following are the observations by the court; that, initially, the applicants filed Revision Application No. 73 of 2013 which suffered from incompetence and were given leave of 7 days by this court (**Aboud, J**) to re-file on 14th day of May 2015. The former application was preceded by Revision No. 80 of 2015 which was also struck out on 14th July 2016 for being incompetent and they were given 14 days' leave to re-file. The order of the court (Nyerere, J) was complied with by re-filing application No. 7 of 2016 which also suffered from legal technicalities before Nyerere, J.

The applicants' Application No. 7 of 2016 was followed by three (3) Applications, one before Mwenempazi (Revision No. 32 of 2017 strike out without leave to re-file on 7/11/2018). Another application for Revision No. 10 of 2019 before me (Gwae, J) which strike out on 1st July 2019 with seven days' leave to refile followed by Misc. Application No. 39 of 2019 for representative Application which was equally, struck out on 28th April 2021 for being incompetent by the court (Robert, J). It is also revealed that, the applicants happened to file an application for execution via Application No.68 of 2021 however the same was struck out by this court

(Kamala, DR) on 28th June 2022 for being res-judicata due to the fact that, the applicants had previously instituted an application for execution through Application No. 19 of 2012.

Eventually, the applicants filed this application on 30th August 2022 for extension of time within which to file an application for revision to the court challenging the award of the Commission vide CMA/ARS/ARS/28/2013.

The respondent, Njake Hotel and Lodges Ltd, through her counter affidavit, strongly resisted this application by stating that, the applicants have accounted for days of delay from when their Application No. 39 of 2019 was struck out on 28th April 2021, a delay of more than a year remaining unaccounted.

On 14th day of November 2022, the 2nd and 6th applicant appeared in person while other applicant did not enter their appearance as it used to be in previous sessions whereas Ms. Jenipher John, the learned advocate appeared in court representing the respondent. The parties orally argued this application.

Both 2nd and 6th applicant argued that, as they were not paid their five months' salaries, this court be pleased to extend time so that, their grievances may be heard and determined in an intended application for revision. On the other hand, Ms. Jenipher maintained that the applicants

have failed to account for days of delay. She then urged the court to refer to the case of **Lyamuya Construction Co. Ltd vs. Christian**, Civil Application No. 2 of 2010 (unreported). Similarly, Ms. Jenipher submitted that, there are no chances of success.

In his rejoinder, the 6th applicant stated that their delay is not inordinate. He thus prayed this court be pleased to extend time to enable them file an application for revision.

Having outlined what briefly transpired before this court and the Commission, it is now the obligation of the court to diligently consider two issues namely; whether the applicants have given good cause for their delay and whether there are overwhelming chances of success or illegality in the intended revision.

In the 1st issue, it is trite law that, in applications for extension of time, the applicants owe duty to give sufficient reason or good reason of what prevented them from filing an appeal or application within time. I am invited by the respondent to be guided by the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where the Court of Appeal expounded the following principles to be taken into consideration when considering extending time:

1. *That, the applicant must account for all the period of delay.*
2. *The delay should not be inordinate.*
3. *The applicant must show diligence/and not a party's negligence or sloppiness in the prosecution of the action that he intends to take.*
4. *If there are other reasons/such as the existence of a point of law of sufficient importance/such as illegality of the decision sought to be challenged."*

Guided by the above principle of law, I am therefore of the considered view that, in giving such explanations for the delay, the applicants are required among others to account each day of delay. However, in the course of accounting days of delay it should not be like mathematical calculations. The requirement of accounting each day of delay has consistently been emphasized in a chain of the courts' decisions for example in **Sebastian Ndaula** the Court of Appeal of Tanzania stated that;

"The position of this court has consistently been to the effect that an application for extension of time, the applicant has to account for every day of delay."

In our case, the applicants have not accounted day of delay from 28th June 2022 to 30th August 2022 when their application for execution

was struck out by the Deputy Registrar of the court which is almost sixty days. Nevertheless, the applicants' application for execution is different from application for revision, if at all, the applicants wanted to pursue revision after I had given them leave to re-file on 1st July 2019 via Revision Application No. 10 of 2019.

I am however aware that, technical delay is exempted in accounting days of delay including pendency of cases or appeals or applications in courts which constitutes technical delay as it was correctly stressed in the case of **Fortunatus Masha vs. William Shija and Another** [9997] TLR 154, the Court of Appeal of Tanzania stated: -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances, an extension of time ought to be granted. "

In the present application, the applicants never bothered to re-file revision application as instructed in their Revision No. 10 of 2019 instead they filed an application for filing a representative application. Subsequent

to the order of Hon. Robert, J, they wrongly filed an application for execution. The acts of the applicants, amount to abuse of court process that is why they have unsuccessfully knocking the doors of the court. The days of delay even sixty days' delay are inordinate as opposed to the applicants' submission leave alone the delay from when I granted them leave to re-file. The applicants, in my considered opinion, ought to have taken prompt and proper action after I made the order granting leave for them to re-file an application for revision since then. Therefore, the first issue is devoid of merit.

Regarding the 2nd issue, I am alive of the principle that when there is existence of a point of law such as illegality in the decision to be challenged either by way of revision or an appeal, in that premise, the court is justified to extend time so that such illegality may be corrected. The case of **Lyamuya Construction Company Limited vs. Board of Trustees of Young Women Christian Association of Tanzania** (supra) cited by the learned counsel for the respondent emphasized this principle and the similar stance was stressed judicial precedent in **Principal Secretary, Ministry of Defence and National Service vs. duram p. valambhia** (1992) TLR 387.

I have closely looked at the applicants' affidavit at paragraph 13, there is only assertion that, the arbitrator failed to evaluate evidence.

Evaluation of evidence does constitute point of law to justify grant of extension of time. Above all it is not apparent on the face of the award taking into account that, the arbitrator based his decision on limitation of time for the applicants' claims on salary arrears, leave due but paid, allowance pay for 2007,2008 or 2009 whereas the applicants' complaint was referred to Commission in the year 2012. In this application for extension of time, I am not supposed in law to deal in detail with the impugned award of the Commission as was rightly stressed in the case cited by the respondent's counsel of **Hidaya Omari vs. Rehama**, Misc. Land Application No. 816 of 2018 (unreported). The 2nd issue is also determined not in favour of the applicant.

It is for the foregoing reasons; I am not hesitant in holding that the applicants' application suffers from want of good cause for their delay, the same is dismissed. Given the fact that, this application is labour related matter, I shall make no order as to costs.

It is so ordered.

DATED and DELIVERED at ARUSHA this 5th December, 2022



M.R. GWAE
JUDGE

Court: Right of Appeal fully explained




M.R. GWAE
JUDGE
05/12/2022