

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**LABOUR APPLICATION 63 OF 2022**

*(Arising from labour Dispute No. CMA/ARB/182/2016 at the Commission for Mediation and Arbitration)*

**CECILIA MANU.....APPLICANT**

**VERSUS**

**OFF GRID ELECTRIC TANZANIA LIMITED.....RESPONDENT**

**RULING**

*Date of last order 30<sup>th</sup> November 2022*

*Date of the ruling 15<sup>th</sup> December 2022*

**BADE J**

The Applicant filed this application for time enlargement to file revision out of time against the judgment and decree of CMA/ARS/ARB/182/2016 delivered on the 26<sup>th</sup> July 2021. She filed this application under section 94(1) of the Employment and Labour Relations Act, cap 366 [RE 2019] and Rule 24(1), (2)(a)(b)(c)(d)(e)(f) and 24(3)(a)(b)(c)(d) of the Labour Court Rules GN. No 106 of 2007 any other enabling provisions of the law. She moved this court by way of Chamber Summons and an affidavit.

The Applicant's application relied on the following considerations as follows;

- i. That, she filed Labour Revision No. 81 of 2021 within time but on the 14<sup>th</sup> June 2022 the said revision was struck out for non compliance with regulation 34(1) of the Employment and Labour Relation Rules GN No. 47 of 2017, that require compliance of filling the CMA form number 10.
- ii. That, since the delivery of the said Order on the 14<sup>th</sup> June 2022 she has been suffering from some health problem that made her to be transferred to her mother's village for natural treatments where she stayed there for five weeks with no communication with her attorney until she recovered, and then came back to give the instruction to her Attorney to file another application.
- iii. That, she filed Application No. 49 of 2022 which was also struck out for non compliance with rule 24(1) of the Labour Court Rules GN. No. 106 of 2007.
- iv. That, the Trial Tribunal's award has illegality by disregarding the evidence brought forward by the Applicant.
- v. That, since her recovery she took necessary steps in following up her matter, the delay occasioned was not due to negligence.

Parties argued this application by way of oral submissions. The Counsel for the Applicant submitted that, the Applicant's delay was a technical one due to the fact that the Applicant filed Labour Revision No. 81 of 2021 which was struck out for being incompetent on the 14<sup>th</sup> June 2022 for failure to file CMA form number 10.

In support of the said technical delay, the Applicant made further submission that, she was seriously suffering and she was treated traditionally and she could not communicate with her Attorneys until she recovered. Following her recovery, she instructed her Attorney to file a new application, the Attorney filed Application No.49 of 2022 for an extension of time, the said application was also struck out for being incompetent on the 10<sup>th</sup> October 2022 and the Applicant filed yet another application for time enlargement on the 17<sup>th</sup> October 2022.

The Applicant raised an illegality as among her grounds for extension of time, she submitted that during the hearing of the application, the Trial Tribunal failed to consider the Applicant's evidence. That the Applicant testified on the procedures for retrenchment that it was done contrary to the law and there was no consultation between the employer and the employee as per rule 23(19) of the Employment and Labour Relations Act.

In reply submissions the Respondent adopted their counter affidavit as part of their submissions, he further explained in response that for the application for extension of time to be granted the applicant must have good cause, the applicant has no good causes for her delay. The fact that the Applicant has been sick since 14<sup>th</sup> June 2022 to 20<sup>th</sup> July 2022 lacks merit since there is no proof of the same. To substantiate his argument, he cited the case of **Muruo Saitare Laizer vs Kagera Sugar, Labour Revision No. 2 of 2022.**

He further submitted that, Labour Revision No. 81 of 2021 was struck out for lacking CMA form number 10 not otherwise, he also argued that the Applicant engaged an advocate hence she had competence to know what she was supposed to do.

With regard to the illegality raised by the Applicant, the counsel submitted that illegality should be an apparent error on the face of the record, the Applicant was supposed to indicate the said illegality she is relying upon for her to granted extension of time, in substantiating her position she cited the case of **Rukia Abdul Upete vs Irene Rukia Kweka, Misc land Application No. 7 of 2020** in which an emphasize was made that, for illegality to be a good cause for extension of time, it should be on the face of the record.

In rejoinder, this Court observed reiteration of the applicant's submission in chief, hence unnecessary to reproduce to avoid repetitions.

*The issue for consideration before this court is whether this application constitutes good causes for time enlargement*

The applicant has alleged a technical delay as one of the grounds for extension of time, in the sense that she acted on time by filing Labour Revision No. 81 of 2021 which was struck out on the 14<sup>th</sup> June 2022, but also on the 25<sup>th</sup> July 2022 he filed Application No.49 of 2022 for extension of time to refile the Labour Revision, the same was struck out for being incompetent. When counting from 14<sup>th</sup> June 2022 to the 25<sup>th</sup> July 2022, it is a period of 41 days which the Applicant was supposed to account for. It is absurd to allege a technical delay under this circumstance the applicant's negligence is unjustifiable, the applicant has failed to show what exactly hindered her in each day in those 41 days to file her application. This Court joins hands with the Respondent that the Applicant has failed to establish technical delay, in the case of **Modestus Daudi Kangalawe vs Dominicus Utenga, Civil Application No. 139 of 2020**, the Court of Appeal of Tanzania held that;

*"The delay was not technical since it is a settled principle that negligence and ignorance of law have never been sufficient or good causes for extension of time"*

With regards to sickness, the applicant ought to have shown proof like medical attendance sheets or admission forms at the medical centers. It sounds awkward to allege traditional treatments which she has no proof of, professional medical officers are the ones to diagnose diseases and come out with findings as to whether a person is sick or not, under such circumstance the Applicant has neither substantiated her sickness nor has she proved her medical treatment. It is good to say, since there is no credence in the alleged facts, this Court subscribes to the Respondent's position that the delay was due to Applicant's own negligence.

Turning to the illegality alleged by the Applicant, this Court is firm that for legal issues to be worth of being considered for time enlargement, they should be on the face of the record and not otherwise. The Applicant alleges that the Trial Tribunal did not consider her evidence, this allegation does not qualify as an illegality since it attracts attention to matters of facts which the Court normally deal with at an appeal or revision stage calling to reevaluate

the evidence. It is good to say, the illegality raised also lacks merit as submitted by the Respondent.

If I may add, even if it's true that the Applicant underwent traditional treatment, she should have had some medical proof of her sickness. That would at least show that her sickness is proven but she opted to be treated traditionally. None was provided.

In the case of **Lyamuya Constructions Limited Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 (unreported), for extension of time to grant, *firstly* the Applicant must account for the whole period of delay, *secondly* the delay should not be inordinate, *thirdly* the Applicant must show diligence, not apathy, negligence, sloppiness in the prosecution of the action that he intended to take and *fourthly* that there is illegality which arises from the violation of some fundamental legal principles.

In line with the above established guidelines for application for extension of time, it is my considered view that the Applicant has not shown diligence, she has acted negligently to pursued her rights. There were multiple applications filed by the Applicant and were all struck out while the Applicant

had engaged an Advocate which show clearly that incompetence, lack of seriousness and or negligence is what caused the Applicant's delay.

In the upshot, this application suffers lack of good causes for time enlargement to file the labour revision. It is hereby dismissed.

Since this is a labour matter, I make no order to costs.

Ordered accordingly.

**DATED** at **ARUSHA** on the 15<sup>th</sup> December 2022.



A handwritten signature in blue ink, appearing to read "A.Z. Bade".

**A.Z. BADE**

**JUDGE**