

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

MISC. LABOUR APPLICATION NO. 15 OF 2021

*(Arising from Application for Revision No.45 of 2020 and from Labour Dispute
CMA/MOR/142/2019)*

BETWEEN

ISRAEL SANGIWA MSINGI APPLICANT

AND

SBC TANZANIA LTD RESPONDENT

RULING

28th October, 2022

CHABA, J.

The applicant herein is seeking for an extension of time within which to lodge a revision (matter) against the Award of the Commission for Mediation and Arbitration at Morogoro in Labour Dispute No. CMA/MOR/142/2019 delivered by Hon. Kayugwa Haji (Arbitrator) dated 15th July, 2020. The application has been brought in Court by way of Notice of Application and Chamber Summons made under Rules 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f) and 24 (3) (a), (b), (c) and (d) and Rule 56 (1) of the Labour Court Rules, 2007, GN. No. 106 of 2007. It is supported by an affidavit deposed by Israel Sangiwa Msingi, the applicant herein.

The brief factual background of the matter goes like this: The applicant was employed by the respondent as a security guard on 1st May, 2006, and



promoted to the position of customer representative on 20th February, 2019 until 18th October, 2019 when his employment contracts was terminated. He unsuccessfully instituted Labour Dispute No. CMA/MOR/142/2019 before the Commission for Mediation and Arbitration at Morogoro (the CMA) after his claims were dismissed on 15th July, 2020.

Dissatisfied, the applicant filed before this Court Labour Revision No. 45 of 2020. The matter was, however, struck out on 23rd August, 2021 on the ground of incompetence. Undaunted, on 13th September, 2021 he once again filed this Misc. Labour Application No. 15 of 2021 seeking for an extension of time to file the labour revision.

At the hearing of this application, the applicant was represented by Mr. Elibahati Akyoo, learned counsel while the respondent enjoyed the legal services from Mr. Bahati Ibrahim Kashoza, learned counsel. With leave of this Court, hearing of the application was disposed of by way of written submissions.

Submitting in support of the application, Mr. Akyoo submitted that since the Revision Application No. 45 of 2020 was struck out and no leave to refile the proper one was granted by the Court, there was no other alternative other than filing this application for extension of time. He further submitted that, the delay to file the instant matter was not due to negligence on his party, and from the records, the previous application was filed within time and the




applicant still have interest to pursue the matter seeking for his rights if at all the present application will be granted.

To put more weight on the above point, he referred this Court to the case of **FORTUNATUS MASHA V. WILLIAM SHIJA & ANOTHER (1997) TLR 154** where the Court of Appeal (T) held *inter-alia* that: -

"With regard to the second point, I am satisfied that a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delay in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and fresh appeal has to be instituted....For these reasons, I allow this application and extend the time for filling or instituting a fresh appeal"

He further cited the cases of **CHRISTOPHER GASPER AND 5 OTHERS V. TANZANIA PORTS AUTHORITY**, MISC. APPLICATION NO. 126 OF 2015 and **AFRICAN LIFE ASSURANCE (T) LTD V. EMMACULATA LEONARD & 3 OTHERS**, MISC. APPLICATION NO. 539 OF 2018 (Both unreported) to support his contention. He argued that, in the case of **AFRICAN LIFE ASSURANCE (T) LTD** (Supra), this Court speaking through her Ladyship Wambura, J. (As she then was) held thus: -



".....as there is no dispute that the earlier application was filed within time and the application at hand has been filed within a reasonable time, then I accordingly grant the application as herein prayed for".

The learned counsel continued to submit that, another reason why the applicant is seeking for an extension of time to lodge an application for Revision, it is because there are illegalities on the Award of the CMA as stipulated under paragraph 17 of the applicant's affidavit. He contended that, in matters of extension of time, Courts in our jurisdiction are guided by the decision of the Court of Appeal of Tanzania in case of **PRINCIPAL SECRETARY, MINISTRY OF DEFENCE V. DEVRAM VALAMBHIA (1992) TLR 185**, wherein the Court held: -

"Where the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if extending time for the purpose to ascertain the point and if the alleged illegality be established to take to put the matter and record right".

To persuade this Court, Mr. Akyoo referred this Court to the case of the **HIGHER EDUCATION STUDENTS' LOAN BOARD (HESLB) V. GABRIEL ROBI**, MISC. APPLICATION NO. 179 OF 2020, HIGH COURT (LABOUR DIVISION) DSM wherein her Ladyship Mruke, J., had the following to state: -



"It is well settled principle of law that plea of illegality in the decision is a good ground for Court to exercise its discretionary power to grant extension of time".

Emphasising on the above point, Mr. Akyoo highlighted that since the applicant has demonstrated the said illegality, this Court is bound to extend time so that the same can be determined by the Court in view of the position held in the case of the **PRINCIPAL SECRETARY, MINISTRY OF DEFENCE V. DEVRAM VALAMBHIA** (Supra).

Lastly, the learned counsel argued that, the Court has to consider the issue of right to be heard on the side of the applicant. He averred that since the applicant is still desirous to challenge the decision of the CMA before this Court by way of Revision, the Court must afford him with an opportunity to be heard as articulated under article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977 (As amended). He cited the case of **MBEYA-RUKWA AUTO-PARTS AND TRANSPORT LTD V. JESTINA GEORGE MWAKYOMA (2003) TLR 251** to reinforce his contention.

To conclude, the learned counsel prayed the Court to grant the applicant's prayers on the basis of his submission.

In reply to the applicant's submission, Mr. Kashoza submitted that an application for extension of time is a matter of legal procedure and this being the case, the rules of procedures must always be adhered to as it was

underscored in the case of **RATNAM CUMARASAMY (1965) 1 WLR, 8 at p. 12**, wherein it was held: -


"...in order to justify a court in extending the time during which some steps in procedure required to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide time table for the conduct of litigation".

Mr. Kashoza continued to highlight that extension of time is not a right of a party but rather, it is an equitable remedy that is only available to a deserving party, but at the discretion of the Court. He underlined that, a party seeking extension of time has a burden of proving to the satisfaction of the Court that there is reasonable cause for the delay. He asserted that, as garnered from the Court records, the applicant applied for Revision No. 45 of 2020 and it was filed on the 25th day of August, 2020 and when the matter was called on for hearing of the preliminary objections raised by the other side on the 23rd day of August, 2021; the applicant prayed to withdraw his application with a leave to refile the same. On this facet however, Mr. Kashoza had the view that withdrawal of an application is not granted when a preliminary objection has been lodged or when the Court has raised an issue *suo motu* against the application as it was underscored by the Court of Appeal of Tanzania in the

case of **HARISH AMBARAM JINA (BY HIS ATTORNEY AJAR PATEL) V. ABDULRAZAK JUSSA SULEIMAN (2004) TLR 343** and the case of **NEEMA GODFREY V. ASIA ONESMO MILANZI**, MISC. CIVIL APPLICATION NO. 14 OF 2020 HC KIGOMA.

He went on submitting that, it is the requirement of the law that in case of delay, the applicant has to account for each day of delay instead of giving omnibus or generalized reasons as it was expounded in the case of **UDULELE SAIDI ATHUMANI V. MARTIN J. MZUANDA**, MISC. APPLICATION NO. 892 OF 2016, HC (T) (Unreported). According to Mr. Kashoza the applicant failed to account for each day of delay. He added that, looking at paragraph 9 of the applicant's affidavit, the applicant, gave a blanket statement that he had family problems to take care of without even disclosing them either in the affidavit or in the counsel's submission.

Moreover, the learned counsel averred that the applicant has totally failed to demonstrate the chances of success if the intended revision will be heard on merits. He asserted that, in considering whether to grant the sought prayers for an extension of time or otherwise, this Court has to satisfy itself that the intended revision truly raises important issues of facts and law worth for consideration by this Court as it was explicated in the case of **SAMSON KISHOSHA GABBA V. CHARLES KINGONGO [1990] TLR 133**, wherein it was held *inter alia* that: -



"... that a good chance of success is among the causes for granting an application for extension of time."

The learned counsel continued to submit by referring this Court to the cases of **LOSWAKI VILLAGE COUNCIL AND ANOTHER V. SHIBESH ABEBE (2000) TLR 204** and **DR. ALLY SHABHAY V. TANGA BOHORA JAMAAT [1997] TLR 305**. He asserted that, for instance in the case of **LOSWAKI VILLAGE COUNCIL AND ANOTHER** (Supra), the Court observed that: -

"... those who seek the aid of the law by instituting proceedings in a Court of justice must file such proceedings within the period prescribed by law and that those who seek the protection of the law in a Court of justice must demonstrate diligence..."

Secondly, in the case of **DR. ALLY SHABHAY V. TANGA BOHORA JAMAAT [1997] TLR 305**, the Court voicing through His Lordship, B.A. Samatta, J.A, (As he then was) at p. 306 – 307 held *inter-alia* that:

*"While I am alive to the need of courts in this country satisfying consumers of justice that they (the courts) always remember that procedural rules are meant to facilitate and not defeat justice I do not entertain any doubt that what Sir Jocelyn Simon P, said in the following passage in his judgment in **Edwards v. Edwards [1968] 1 WLR 149 at 151**, is applicable to the*

administration of justice in this country: So far as procedural delays are concerned, Parliament has left discretion in the courts to dispense with the time requirements in certain respects. That does not mean, however, that the rules are to be regarded as, so to speak, I antique timepieces of an ornamental value but no chronometric significance, so that lip service only need be paid to them. On the contrary, in my view the stipulations which Parliament has laid down or sanctioned as to time are to be observed unless justice clearly indicates that they should be relaxed".

As to the question of illegality, the learned counsel underlined that the counsel for the applicant has merely averred that the impugned Award is illegal. He submitted that the applicant's argument has no substantial value on the ground that the same has no legal support. That means such contention is un-substantiated because the learned counsel failed to disclose even a single element of illegality in the CMA Award.

To round up, Mr. Kashoza avowed that based on the above submission, this application is totally without merit and therefore should be dismissed with costs.

Having heard the rival submissions advanced by both parties, and upon considering the applicant's application coupled with an affidavit deposed by the applicant, the issue which needs consideration, determination and




decision thereon is whether or not the applicant has managed to adduce sufficient reasons to warrant this Court exercise her discretionary power to grant the prayers sought for extension of time as stated in the notice of application and chamber summons.

It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause. Pursuant to Rule 56 (1) of the Labour Court Rules, GN. No. 106 of 2007 it is upon the applicant to show that the delay was due to good cause and not otherwise.

In determining the instant application, I find it apt to refer to the principles laid down by the Court of Appeal of Tanzania in the case of **LYAMUYA CONSTRUCTION COMPANY LTD V. BOARD OF REGISTERED TRUSTEE OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA**, CIVIL APPLICATION NO. 2 OF 2010 CAT ARUSHA SUB-REGISTRY wherein the Court held among other things that: -

"As a matter of general principle, it is in the discretion of the court to grant extension of time. But that discretion is judicial and so it must be exercised according to the rules of reasons and justice and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:



- a) *The applicant must account for all the period of delay;*
- b) *The delay should not be inordinate;*
- c) *The applicant must show diligence and not apathy. Negligence or sloppiness in the prosecution of the action that he intends to take;*
- d) *If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficiency importance, such as the illegality of the decision sought to be challenged”.*

I have objectively gone through the applicant's affidavit sworn by himself supporting the application and found that the reasons advanced by the applicant are technical delays because the matter in which this application was born of, i.e., Revision Application No. 45 of 2020 shows that it was struck out on 23/08/2021 on the ground of being incompetent.

I wish to point out that, technical delay is one of the grounds which may warrant the Court to grant an extension of time. But it should be noted that this technical delay alone may not suffice to grant extension of time if it is found that the applicant did not comply with other conditions. As gleaned from the records, the latest application filed by the applicant was struck out on the 23/08/2021 and this application was filed by the applicant before this



Court on 13/09/2021 which is a delay of 20 days after the order striking out his revision application.

On scrutiny of the affidavit deposed by himself, I have noted further that the applicant did not account for each day of the delay particularly on the alleged twenty (20) days. It would appear that, the applicant may be thought that as he was surrounded by a technical delay, he would come to the court at the time that could wish by himself. Therefore, he delayed for about twenty (20) days and filed this application without even accounting for each day that he delayed to file the application.

Our Apex Court and this Court have in the number of cases ruled that, in an application for extension of time, applicant must account for each day of the delay. Good examples are the cases of **SAID NASSOR ZAHOR AND OTHERS V. NASSOR ZAHOR ABDALLAH EL NABAHANY AND ANOTHER**, CIVIL APPLICATION NO. 278 OF 15 OF 2016, CAT; **FINCA (T) LIMITED & ANOTHER V. BONIFACE MWALUKISA**, CIVIL APPLICATION NO. 589 OF 2018) [2019] TZCA 56, and **BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO**, CIVIL APPLICATION NO. 3 OF 2007, CAT (All unreported). For instance, in the case of **BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO** (Supra), the Court of Appeal (T) had the following to state: -

***"The applicant has to account for everyday of the delay,
for otherwise there would, if I could use the wise words of***



the Court of Appeal, "be no point of having rules prescribing periods within which certain steps have to be taken". [Bold is mine].

Placing reliance on the above precedents, and upon gauging the applicant's application which is supported by an affidavit sworn by the applicant himself, I am satisfied that the applicant has failed to account for every day of the delay. As correctly submitted by the learned counsel for the respondent, I fully subscribe to his contention that the applicant through his affidavit gave general statements or reasons in a bid to establish the purported delays. Truly, the reasons for delays have neither been disclosed in the affidavit supporting the notice of application and chamber summons nor substantiated by the applicant's counsel in his written submission.

As gathered from paragraphs 1 to 19 of the applicant's affidavit, the applicant narrated a series of events commencing with the story that he was the complainant at the CMA in Labour Dispute No. CMA/MOR/142/2019, his background history in respect of employment, how he was unfairly terminated from his employment, prosecuted his matter before the CMA and later before this Court and his grievances in respect of what he believes that the proceedings of the CMA are tainted with illegality. He then stated at paragraph 19, I quote:

"19. That, in the circumstances and it will be in the interest of justice if this application for extension of time will be granted as



there is a good reason for revising the said CMA Award as it is tainted with illegalities after the intended restoration application be granted (sic)".

From the above enlightenments, I have found that there is no justifiable cause to warrant this Court exercise its discretionary power to grant the orders sought by the applicant to extend time upon which he can file his application for revision out of time to revise and set aside the CMA Award stemmed from the Labour Dispute No. CMA/MOR/142/2019 between the parties.

Accordingly, the orders sought by the applicant seeking indulgence of this Court to grant extension of time within which to file revision against the decision of the CMA has no merits and it is hereby dismissed with no order as to costs. **I so order.**

DATED at MOROGORO this 28th day of October, 2022.




M. J. Chaba

Judge

28/10/2022