

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

**LABOUR APPLICATION NO. 04 OF 2020
(ORIGINAL CMA/TAN/1261/2008)**

ALOYCE LEKULE..... APPLICANT

VERSUS

TANGA CEMENT PLC.....RESPONDENT

13TH APRIL 2022

L. MANSOOR, J

RULING

The Applicant in this application for Revision, Aloyce Lekule filed a Notice of Application for extension of time for filing the Notice of Appeal to the Court of Appeal. He made his application under Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R: E 2002, The Applicant also cited Rule 24 (1), Rule 24 (2) (a-f), Rule 24 (3), (a), (b), (c), (d), Rule 28(1) (c) of the Labor Court Rules, 2007 (GN No. 106 of 2007). The Applicant seeks for extension of time to file the Notice of



Appeal to the Court of Appeal against the decision of this Court (Labor Division) in Revision No, 20 of 2013 delivered on 02/10/2014 delivered by Hon. Judge R.M Rweyemamu J (as she then was).

The Applicant also filed the chamber summons supported by his own affidavit in which the reasons for delay were explained.

The application was vehemently resisted by the respondents who filed the Notice of opposition, Notice of representation and the counter affidavit.

This application was heard and determined by written submissions. The Applicant submits that he appealed against the decision of the Arbitrator to the High Court, Labor Division but on 02 October 2014, his Revision was dismissed. He was aggrieved and wanted to appeal to the Court of Appeal, thus on 3rd November 2014 he lodged the Notice to Appeal, and applied for copies of proceedings and judgement. However, upon realizing that the Notice of Appeal was filed out of time,

he applied to the Court to withdraw the Notice. He then filed two applications at the High Court, Misc. Labor Application No. 5 of 2016, and No. 12 of 2019, but all these two applications were struck out by the High Court for they were defective. He submits that since he has been pursuing different applications in the High Court to find his way to the Court of Appeal, the time he has spent in pursuing the cases at the High Court be excluded, and he be given the extension to file the Notice of Appeal. To buttress his arguments, he referred to the Court the case of Mustafa Athumani Nyoni vs Issa Athumani Nyoni, Civil Application No. 486/10 of 2019, Court of Appeal sitting at Iringa (unreported), also the case of Finn Von Wurden Petersen and another vs Arusha District Council, Civil Application No. 562/17 of 2017, Court of Appeal sitting at Arusha (unreported).

As noted by the Counsel for the respondents and as the records bears it, this present application was filed on 5th March 2021, seeking to lodge Notice of Appeal for a decision which was delivered on 2nd November 2014. This is almost eight

years have passed since the decision the applicant seeks to appeal against has been pronounced. Now, the court is asked upon to determine whether the applicant has shown sufficient grounds for such a long delay. As held in the case cited by the counsel for the respondent in his submissions, the case of Lyamuya Construction Company Limited vs Board of Trustees of Young Women 's Christian Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal sitting at Arusha, (unreported), that although it is the discretion of the Court to grant extension of time, but such discretion must be exercised judicially. That the applicant is required to account for each day of delay, and the delay must not be inordinate. That the applicant must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take. The test is therefore that the Applicant must show sufficient reasons.

It is true that the Applicant was not diligent, and the delay is inordinate. It took the applicant three years to file another application from the date he decided to withdraw Civil

Application No. 3 of 2015 from the Court of Appeal. This delay of three years is in-ordinate and the Applicant failed miserably to account for this period of three years.

Again, the Applicant, as submitted by himself has been filing incompetent applications in Court which all ended up being stricken out for being incompetent. He has not only been inconveniencing the opposite party, but also made the opposite party incur expenses.

The High Court is empowered by Section 11 of the Appellate Jurisdiction Act to grant an extension of time to file Notice of Appeal but the discretion must be exercised judicially.

It appears that the Applicant herein delayed in filing the appeal at the Court of Appeal due to his own negligence. The applicant has been doing trial and errors by filing in court frivolous and vexatious applications which all ended up being withdrawn or thrown out by the Courts. The Applicant did not take steps necessary for lodging a competent appeal in the

Court of Appeal thereby not only inconveniencing the respondent but also giving a lot of costs to the respondent.

As held in the case of **Kalunga and company Advocates vs National Bank of Commerce (2006) TLR** which states basically that matters of extension of time are matters of discretionary powers of the court, and "*where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material to enable the Court to exercise the discretion given by Rule 8 of the Court of Appeal Rules.*"

The Applicant ought to have taken active steps for expeditious finalization of his appeal, otherwise it is an abuse of the processes of the court for a party to prolong litigations. The Applicant cannot continue to litigate for years and years. Litigations must come to an end. The Applicants cannot be allowed to file the Notice of Appeal after being careless and negligent. He failed to pursue his appeal in time and the time taken by the applicant pursuing defective applications and appeals cannot be sufficient causes for condoning the delay,

and this shows inaction and lack of diligence on the part of the Applicant.

The affidavit of the Applicant in support of the application shows no sufficient cause for granting the prayers sought. See the case of **the Registered Trustees of the Archdiocese of Dar es Salaam vs the Chairman, Bunju Village Government and 11 others, Civil Appeal No. 147 of 2006**, Msoffe J.A, CA, at page 9, said:

"In giving liberal interpretation to the words "sufficient cause" to this case it will be noted at once that the respondent had no good case on the merits of their intended appeal to the High court. They could not have had good case when, as already stated, they did not apply for leave to appear and defend the suit in RM's Court in the first place. If they had wished their starting point really ought to have been to file an application in the RM's Court for extension of time to file an application for leave to appear and defend. Their application for

extension of time to file a written statement of defence was misconceived, to say the least."

In emphasizing the points on what constitutes sufficient cause, the case of **Regional Manager, TANROADS Kagera vs Ruaha Concre Company Limited, Civil Application no. 96 of 2007**, and the case of **Ratma vs Cumarasamy and another (1964) 3 All ER, 933** in which Lord Guest had this to say at page 935A-

"The rules of court must, prima facie be obeyed, and to justify a court extending the time during which some step-in procedure requires 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 a timetable for the conduct of litigation".

Although matters of extension of time are matters of judicial discretion, such discretion should be exercised if sufficient

reasons have been shown as stated in the case of **Kalunga and Company Advocate vs National Bank of Commerce (2006) TLR 235.**

Ordinarily the time schedule contained in the provision of the law is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the Applicants shall not be granted just as a matter of routine and merely for asking, more so when the period for doing the acts asked for in the chamber summons has long expired, and the Applicants have failed to account for each day of delay.

Applying to above principles to the facts of the present case and particularly since the applicant was careless in obliging with the procedures for a competent appeal and he was duly represented by an abled advocate for the period of 8 years to have the appeal properly instituted at the Court of Appeal, the reasons advanced by the applicant cannot constitute sufficient cause as can be vividly seen there was negligence and lack of

diligence on his part. Consequently, based on the above discussions, the applicant failed to provide good cause for the court to extend the time to file the Notice of Appeal. Thus, the application is dismissed with costs.

**DATED AND DELEIVERED AT TANGA THIS 13TH DAY OF APRIL
2022**




LATIFA MANSOOR
JUDGE
13TH APRIL 2022