

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

MISC. LABOUR APPLICATION NO 12 OF 2021

(Arising from the Ruling and order of Execution No. 46 of 2015 in the High Court of Tanzania at Musoma Labour Court)

BENJAMINI MUGAGANI APPLICANT

VERSUS

BUNDA DISTRICT DESIGNATED HOSPITAL RESPONDENT

RULING

31st Jan and 28th February, 2022

F.H. MAHIMBALI, J.:

The issue for the Court’s determination in this matter is whether this application is worth of consideration to grant as preferred under rule 56(1), (2) and (3) of the Labour Court Rules, GN. No. 106 of 2007. The application is supported by the affidavit of the applicant.

The applicant being aggrieved by the decision of the Deputy Registrar of the High Court in execution no. 46 of 2015 dated 8th November, 2017 (at Musoma) has brought this application for review out of time. As to why he has preferred this application, he boasted that there are sufficient reasons for the delay, that the complained ruling is

tainted with illegalities and that the case is a fit case to be resolved by this Court.

During the hearing of this application, the applicant was represented by Mr. Gervas Emmanuel learned advocate while the respondent was dully represented by Mr. Mhagama, also learned advocate.

Arguing in support of this application for extension of time brought under rule 56 (1), (2) and (3) of the Labour Court Rules GN 106 of 2007 Mr. Gervas Emmanuel submitted that the applicant was once an employee of the respondent Bunda District Designated Hospital – Laboratory technician. The applicant’s employment was terminated by the respondent on 5/5/1998. Following his termination of employment, he referred the dispute to the Labour Reconciliation Board challenging his unlawful termination. The Labour reconciliation Board on 12/8/1998 ruled that his employment was unlawfully terminated and ordered his immediate reinstatement within 21 days. The respondent was not satisfied with the decision of the Labour Reconciliation Board and then lodged his appeal before Labour Minister on 4/9/1998.

For reasons best known by the respondent, he withdrew his appeal pending before the minister and wrote a letter to the applicant that he was reinstated to his place of work by 12/10/1998 in compliance to the Labour Reconciliation Board. The applicant was then reinstated to his place of work before he was terminated again (15/10/1998) for the interest of the respondent, say after four working days after his reinstatement.

Following this, the applicant then decided to execute the earlier order by the reconciliation Board which ordered his reinstatement. He also notified the Minister responsible for Labour matters. The execution of the award was then filed.

By the Labour minister's letter dated 15/5/2015, following change of law, the said matter was then forwarded to High Court Judge which was reference no 21 of 2010. In the said reference matter, the High Court judge (Songoro, J) confirmed the decision of the Labour Reconciliation Board.

He further submitted that through Execution no 46 of 2015, the respondent raised an objection that the same was time barred. Counting

from 1998 to 2015, that there lapsed a total of 17 years as time for filing the application had lapsed since 2013.

From this decision, the applicant wrote a letter to the Minister responsible for legal affairs seeking extension of time. That on 5/1/2020 the Minister replied that he has no mandate to extend time for a matter pending in court. Thus, the genesis of the current application.

In essence through Misc. Labour Application No 1 of 2020, the applicant filed an application before this court which was ruled that the matter was "functus official" to consider this application.

The applicant then filed another application (8/2020) which the same was dismissed for want of legality. Thus, the current application is extension of time for this court to review its own decision in the ruling of Execution case no 46 of 2015 dated 10th July, 2017. The main reason is illegality of the decision of the matter (no 46 of 2015). The said illegality says this "That time in matters of execution starts to run when it is final and conclusive".

In essence, submitted Mr. Gervas Emmanuel that this matter had reached that final stage on 6/5/2011 before Hon Songoro, J (see section 21 (3) c of the law limitation Act). In the case of **Maulid Ngowengo**

and 3 others vs General Manager Sunra Industries (Civil Appeal No. 58 of 2019) at page 17, time spent before the trial court must be excluded (section 21 (2) and (3) of the law of Limitation Act). Following this stance, he humbly prayed that this Court to consider this application.

On illegality, he submitted that this application for extension of time be granted for reason of illegality. In Misc. Labour Application No. 46 of 2015, there is an illegality (error on the face of record) when computing time of the case. This prejudiced the applicant's rights. As the original decision given on 4/9/1998 was timely given, its execution as well was within time. It was expected for the decision of the Labour Court (Musoma) to count to the said time as well so that to reach proper computation. It is his submission that, there is no any negligence on part of the applicant.

With this submission, he humbly prayed that this application be allowed with costs for purposes of reviewing its own decision/order for the best interests of justice.

In countering the application, Mr. Mhagama learned advocate for the respondent, briefly submitted that, the decision by P. R. Kahyoza

(Deputy Registrar) was rightly given. The legal remedy for a time barred matter is dismissal. As the decision was given on 12/8/1998, that the employer appealed against that decision however he rescinded that appeal on 9/10/1998. At paragraph 11 of the applicant's affidavit supports the assertion that the employee was reinstated. Before Hon. Songoro, J there was nothing to execute. Thus, by 2015, the applicant was time barred. And there is nothing of illegality at all. If dissatisfied, he had the right to appeal to CAT. In the circumstances of this case, there is nothing executable.

On accounting for each day of delay, there is nothing of accounting done, the applicant has not been able and clear to account of each day of delay. As he is just spending the precious time of the Court unreasonably, he prayed that the application be dismissed with costs as it is vexatious application.

By way of rejoinder, Mr. Gervas while reiterating his submission in chief he insisted that 12 years had not already expired. Thus, it was not time berried. Time started running from the decision of Hon. Songoro, J) (6/5/2021). In his opinion, what the employer did not illegalize the decision of Hon. Songoro, J as the Hon. trial Judge (in **Civil Appeal No. 158 of 2019**) stated very well at page 17.

On computing of each day of delay, he submitted that the applicant has been able to account for each day of delay. He concluded by praying that for justice to be done, this application to be allowed.

All in all, guided by the minimal guidelines set by the Court of Appeal in the case of **Ngao Godwin Losero** (supra) making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (*Civil Application No. 2/2010 – unreported*) the Court of Appeal reiterated the following guidelines for the grant of extension of time.

- 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 is intending to take.*
- d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.*

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from parties through their respective counsel. For sure I am mindful that to refuse or grant this application is

the court's discretion. However, to do so there must accounted reasons for that. In ***Mbogo Vs. Shah (1968) EA*** the defunct Court of Appeal for Eastern Africa held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."

In this application, the reason why this application should be granted is mainly premised on trivial ground of time spent in prosecuting the wrongly filed cases in attempt of attaining justice. Not knowing a proper law in gearing your appropriate application is equivalent to ignorance of the law or negligence of the party/applicant. This has been held times out of number, that ignorance of law has never featured as a good cause for extension of time (see **Ngao Godwin Losero –*Civil Application No. 10 of 2015***). In this case it was held that, a party who is not properly seized of the applicable procedure will always ask to be apprised of it, for otherwise he/she will have nothing to offer as an excuse for sloppiness.

On illegality, it is not always the fact that a remedy to a dismissal matter on issue of time limitation is to resort to the review application. In this matter the alleged point of illegality could best challenged by way of appeal (See **East Africa Development Bank vs Blueline**

Enterprises Limited, Civil Appeal No. 101 of 2009 CAT at Dar es Salaam (unreported).

All this said and done, what has been deponed and argued by the applicant's counsel is legally speaking nothing but exhibiting the party's apathy, negligence and sloppiness in which I am not in a position to condone any.

In the end result, the application is dismissed with costs for being devoid of any merit.

It is so ordered.

DATED at MUSOMA this 28th day of February, 2022.



F. H. Mahimbali

Judge

28/02/2022

Court: Ruling delivered this 28th day of February, 2022 in the presence of the appellant, Mr. Mhagama advocate for the Respondent and Mr. Gidion Mugo – RMA.

F. H. Mahimbali

Judge

28/02/2022