

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LABOUR APPLICATION NO. 38 OF 2021

(C/F Revision Application No. 17 f 2019)

DANIEL JEREMIAH MNGALE.....APPLICANT

VERSUS

NJAKE ENTERPRISE OIL TRANSPORT LIMITED.....1ST RESPONDENT

MBUYU INVESTMET LIMITED.....2ND RESPONDENT

MELEKI INVESTMENT LIMITED.....3RD RESPONDENT

NJAKE HOTEL AND LODGE LIMITED4TH RESPONDENT

MSHI VIEW HOTEL LIMITED.....5TH RESPONDENT

NORTHEN HIGHLANDS DRINK COMPANY LIMITED.....6TH REPENDENT

RULING

16/2/2022 & 17/5/2022

ROBERT, J:-

The Applicant, Daniel Jeremiah Mngale, seek to be granted an order for extension of time to file an application for review of the Ruling of this Court in revision application Number 17 of 2019. The application is brought under the provisions of Rule 24 (1), Rule 24 (2) (a), (b), (c), (d), (e) and (f), Rule 24 (3) (a), (b), (c) and (d), Rule 55 (2) and Rule 56 (1),

(2) and (3) of the Labour Court Rules, G.N No. 106 of 2017 and grounded on the reasons stated in the affidavit sworn by the applicant in support of this application.

Initially, the applicant herein, through the services of his counsel, filed Revision Application No. 17 of 2019 on 9th April, 2019 which was dismissed by this Court on 18th November, 2021 as a result of a preliminary objection raised by the learned counsel for the Respondents to the effect that the application was time barred. Aggrieved, the Applicant is now seeking indulgence of this Court to extend time within which he can file an application for review of the said ruling.

At the hearing of this application, the Applicant appeared in person without representation whereas the respondent enjoyed the services of Mr. Matuba Nyerembe, learned counsel. At the request of parties, this application was disposed of by way of filing written submissions as ordered by the Court.

Submitting in support of this application, the Applicant argued that, the decision to dismiss Revision No. 17 of 2019 is tainted with illegality due to wrong information. He argued that, he had stated in the Notice of Application for Revision No. 17 of 2019 that the CMA decision was collected on 28th February, 2019 and in his reply to the counter affidavit

of the Respondents he attached a copy of the collection register which proves the date of collection of the award. Hence, the Ruling of this Court in Revision No. 17 of 2019 needs to be reviewed.

He maintained that this application was filed before this Court on 18th August, 2021 after receiving a copy of the decision in Revision No. 17 of 2019 on 5th August, 2021. He started to seek for legal assistance since the Advocate who was representing his case, Mr. Said Said, was not reachable having broken his leg.

He argued further that, his delay in this application does not constitute a case of procedural abuse because he became aware of the decision on 5th August, 2019 and he had to seek for legal assistance because his advocate was not reachable after breaking his leg.

Further to that, he submitted that it was the duty of the CMA to put a collection register in the original file so that parties could not be blamed for their lateness. He also cited the case of **Ihembe Industries Co. Ltd vs Tanzania Electrical Mechanical and Electronics Services Agency (TEMESA)**, Misc. Civil Application No. 381 of 2018 and **Regional Manager TTCL vs Othman Mbarouk and 21 Others**, Civil Application No. 4 of 2022. In the end he prayed for the application to be granted.

In response, Mr. Nyerembe faulted the Applicant for dwelling on issues of the alleged illegality which is not the case for now instead of discussing the reasons for his delay to file the application for review.

He maintained that, the Applicant neglected completely to account for the days of the delay. He didn't indicate how much time he delayed in filing the application for review as required in the case of **Bushiri Hassan vs Latifa Lukio Mahayo**, Civil Application No. 3 of 2007 that, even a single day of delay has to be accounted for. He indicated that, the impugned decision sought to be reviewed was delivered on 18th day of November, 2020 and the present application was filed on 18th August, 2021 after the lapse of 213 days.

Further to that, in his affidavit the applicant alleged that he was late to file the application since his counsel was injured, however, Mr. Said Said who was his counsel in the previous application for Revision injured his leg on 1st day of February, 2021 while playing a football match for "Law Day, 2021" and by that time the ruling for Revision no. 17 of 2019 was already delivered way back in November 18, 2020. Further to that, there is no proof as to when the Applicant collected the said ruling or the affidavit from his counsel to prove that his client was not aware of the deliverance of the said ruling.

He submitted further that, despite the Applicant's alleged illegality that tainted Revision Application No. 17 of 2019, the Applicant failed to show this Court which aspect of illegality tainted the said Revision Application. He maintained that, the Applicant merely stated wrong information hence illegality without demonstrating the said illegality in the said application.

He submitted that, the Applicant's claim of illegality is brought in his submissions which is not a proper avenue and the proof thereof was supposed to be attached in the affidavit supporting the application not in his submissions. He maintained that, even if the said attachment is received by the court still it is not genuine as it doesn't state if it is a CMA register or a court register, it does not bear a court or CMA seal and it is not known whether it is an original or a photocopy. He added that, in a previous application, the court acted on the information brought by both parties and the decision based on those submissions.

Further to that, he argued that, the reasons submitted by the applicant proved negligence on his party as he was duty bound to follow up with his counsel. He maintained that, the delay of 213 days is a sheer negligence of the highest degree and won't constitute sufficient cause. He referred the Court to the case of **Registered Trustees of the**

Archdiocese of Dar Es Salaam vs Chairman Bunju Village Governmentas and eleven Others, Civil Appeal No. 147 of 2006 (Unreported).

He argued that, as the applicant's delay fall into actual delay and not technical delay, the same cannot constitute sufficient reasons for the delay. Hence, he prayed for this application to be dismissed since the Applicant failed to demonstrate sufficient cause to move this court to exercise its discretionary powers to extend time for application for review.

Having examined and reflected on the circumstances of this matter, I will now make a determination on central question in this matter which is whether the applicant has demonstrated sufficient cause for this court to grant an order for extension of time to file an application for review.

It is the argument of the Applicant that he delayed to file his application on time because his advocate was sick and he was not informed when the court delivered the ruling on 18th day of November, 2020 and therefore he failed to file his review application within the prescribed time. Further to that, the Applicant alleges that there are illegalities on the decision intended to be reviewed due to wrong information submitted before the court.

The respondent on the other hand is of the view that the applicant's application has neither demonstrated the length of the delay nor reasons for the delay. According to him the applicant ought to have accounted from the date the intended review was delivered, that is 18/11/2020 to the time this application was filed 21/8/2021. Further to that, he submitted that the illegality alleged by the Applicant is not reflect in his affidavit and the same is not apparent on the face of the record (Ruling). Supporting this argument, the respondent cited the case **of Registered Trustees of the Archdiocese of Dar Es Salaam** (supra). He further concluded that mere allegation of illegality without any proof does not amount to sufficient cause.

It is a common ground that, in applications for enlargement of time the Applicant has to account for each day of delay failure of which results in the dismissal of the application (See **Bushiri Hassan vs Latifa Mashayo** (supra), **Bariki Israel vs Republic**, Criminal Application No. 4 of 2011 (Unreported), **Crispian Juma Mkude vs Republic**, Criminal Application No. 34 of 2012 (Unreported)).

As rightly argued by the learned counsel for the Respondent, the Applicant's affidavit is silent in accounting for the days of the delay. This Court has noted that, Revision No. 17 of 2019 was dismissed on 18th day

of November, 2020 and the present application was filed on 18th Day of August 2021, which means the Applicant was late for more than 213 days. The Applicant stated in his affidavit that he received a copy of the said ruling on 5/8/2021 without attaching any proof to back up his argument. Basically, the applicant is stating that he was not aware of the deliverance of the Ruling in Revision No. 17 of 2019 as he was represented by an advocate who fell sick after injuring his leg that's why he failed to file his review application within the prescribe time. Unfortunately, the Applicant's argument is not backed by any proof. As rightly argued by the learned counsel for the Respondent, the Applicant ought to have tendered an affidavit from his counsel to corroborate his statement on the alleged sickness and the fact that he did not tell his client about the Ruling of Revision No. 17 of 2019.

On the question of illegality, this Court is aware that there are numerous decisions of this Court and the Court of Appeal of Tanzania, where illegality of the challenged decision is considered as a good cause for extension of time. In the case of **VIP Engineering and Marketing Limited and 2 Others vs Citibank Tanzania Limited**, Consolidated Civil Reference No.6, 7 and 8 of 2006 (unreported) it was held that:-

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay".

Likewise, in the case of **Tanesco vs Mufungo Leonard Majura and 15 Others**, Civil Application No 94 of 2016, (Unreported), the Court was faced with the same issue and it stated that;

"Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned suffices to move the Court to grant extension of times so that, the alleged illegality can be addressed by the Court".

In the present application the Applicant in his affidavit together with the reply to the counter affidavit did not state the issue of illegality. The issue came from his submissions that the decision intended to be challenged is tainted with irregularity caused by wrong information. Hence, the arguments made in the submissions do not reflect the Applicant's affidavit. Further to this, as rightly argued by the learned

counsel for the Respondent, the alleged illegality is not apparent on the face of the record.

It should be noted that in cases where extension of time was granted on grounds of illegality, the alleged illegalities were well explained, see the case of **Finca (T) Limited and another vs Boniface Mwalukisa**, Civil Application No.589/12 of 2018 (Unreported) and **Principal Secretary Ministry of Defence and National Service vs Devram Valambhia** [1999] TLR 182 where the illegality alleged related to the applicant being denied an opportunity to be heard contrary to the rules of natural justice.

Similarly, in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 the Court of Appeal of Tanzania observed that;

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient

importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

In the present case, considering that the alleged illegality was not pleaded by the Applicant and is not apparent on the face of the record, this Court is neither properly moved to consider the question of illegality nor persuaded by the argument raised in support of the alleged illegality as a ground for extension of time.

On the foregoing reasons, I find no merit in this application and I proceed to dismiss it accordingly.

It is ordered.



A handwritten signature in blue ink, appearing to read "K. N. Robert".

K. N. ROBERT
JUDGE
17/5/2022