IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLENEOUS LABOUR APPLICATION NO. 273 OF 2022

(Arising from the Decision of the High Court of Tanzania Labour Division in Revision Application No. 158 of 2021 (Hon. Maghimbi, J) Dated 06th May 2022.)

MICHAEL ELIFURAHA MAVURA .....APPLICANT

VERSUS

TANZANIA BREWARIES LIMITED .....RESPONDENT

RULING

K. T. R. MTEULE, J.

30th March 2023 & 24th April 2023

This Ruling concerns an Application seeking for extension of time to lodge an Appeal to the Court of Appeal against the Judgment of this Court issued in **Application for Revision No 158 of 2021,** originating from the decision of the Commission for Mediation and Arbitration of Dar es Salaam zone. The said Application for Revision was dismissed. Being dissatisfied with the dismissal, the Applicant is intending to challenge the High Court decision by a way of Appeal to the Court of Appeal of Tanzania, but he is time barred. He therefore lodged this Application seeking for extension of time to lodge a Notice of Appeal.

The reasons advanced by the Applicant for failure to lodge the Appeal timely is the confusion in the time of delivery of judgment which caused him to be unaware of the date when the said judgment was delivered hence failure to keep the track of the process. According to the affidavit supporting the Application, the last order of the High Court scheduled **29th May 2022** as the date of the delivery of judgment but when he attended the Court on this date nothing happened, and consequently he wrote a letter to seek explanation concerning the status of the matter from the Deputy Registrar of this Court. The Applicant deponed further that due to his follow-up, on **16th June 2022**, he was availed with a copy of judgment indicating the said judgment to have been delivered on **6th May 2022** and after studying it, he discovered points of illegalities contained in the Judgment hence the intention to appeal to the Court of Appeal.

The Application was challenged by a counter affidavit sworn by Mr. Ruben Robert, Advocate who is the Respondent's Counsel. Through the counter affidavit, the Respondent disputed to have the Judgment fixed on **29th May 2022**. In his knowledge, the said Judgment was fixed on **29th April 2022** and on this date, the Respondent appeared in the absence of the Applicant and was informed by the Court Clerk that the said Judgment would be delivered on **6th May 2022.** The Respondent

alleged the applicant of negligence for failure to make follow-up to his revision after **29th April 2022**. The counter affidavit disputed all the material assertions by the Applicant.

The Application was argued by a way of written submissions. The Applicant's submissions were filed by Advocate Elisaria J. Mosha while the Respondent's submissions were filed by Advocate Ruben Robert.

In the Applicant's submission, the first issue addressed by Advocate Mosha was whether the delay has been accounted for. According to him the confusion concerning the date of delivery of the judgment amounts to a sufficient account of the delay. He referred to the case of **Security Group Ltd, versus Huruma Kimambo, Misc. Labour Application No. 614 of 2019 (unreported),** where this court, Muruke J, while confronted with similar situation referred to the decision in **Blue Line Enterprises Ltd vs. East African Development Bank in Misc Application No. 135 of 1995** and found a delay caused by a defect caused by the Registrar to be a reasonable cause to grant extension of time since it was not on the fault of the Applicant.

He referred to the respondent's statement that when he attended the court for judgment on **29th April 2022,** he was told by court registry clerk that the same was adjourned to **6th May 2022**. In his view, the

respondent's failure to name the alleged court clerk or even lodge a supplementary affidavit to support the assertions, tally with the complaints by the applicant on the importance of putting parties to notice of the date of judgment. He invited this court to peruse the record of proceedings in **Revision No. 158/2021** where it will discover that the Hon. High Court Judge scheduled the date of judgment to be **29th May 2022** and not **29 April 2022**. According to Advocate Elisaria Mosha, it is on this date when the counsel for the applicant entered appearance and noted that the judgment had already been delivered and despite his efforts to put this court to notice, subsequently thereafter, the applicant was supplied with the said judgment on **16th June 2022** and filed this application by **30th June 2022**.

It is Advocate Elisaria Mosha's submission therefore that, the judgment was delivered without a notice of its delivery on the **6th May 2022** and that the failure by the applicant to attend for judgment was not by negligence but was caused by reasons beyond his control as stated in paragraph 9 of the affidavit.

Submitting to establish existence of illegalities, Advocate Elisaria Mosha referred to the case of **Lyamuya Construction Company Limited versus Board of Trustees of Young Women Christian Association**

of Tanzania Civil Application No.2 of 2010, (unreported), where the Court of Appeal held that:- "*a point of law of importance such as the illegality of the decision sought to be challenged could constitute a sufficient reason for extension of time.*"

In a bid to demonstrate that the errors of law in the impugned judgment, were clear on the face of the record, Advocate Elisaria Mosha referred to page 7 of the High Court judgment and stated that the court introduced new issue as to whether the respondent tendered sufficient evidence to prove the misconduct alleged in the charge sheet in the course of composing the judgment which is contrary to the law and principles of natural justice on the right to be heard. According to Advocate Elisaria Mosha, the High Court did not determine the 5 grounds of revisions as contained at paragraph 24 of affidavit supporting Revision.

Advocate Elisaria Mosha supported his assertion by the case of **Alisum Properties Limited versus Salum Selenda Msangi, Civil Appeal No. 39 of 2018 (unreported)** in which the Court of Appeal quoted Mulla, in his book titled **The Code of Civil Procedure Voll.II 15 Edition at page 11432** cited in the case of **Scan-Tan Ltd versus The Registered Trustees of the Catholic Diocese of Mbulu, Civil**

Appeal No. 78 of 2012 (unreported) at page 14. He quoted the following words: -

> *"If the court amends an issue or raises an additional issue, it should allow a reasonable opportunity to the parties to produce documents and lead evidence pertaining to such amended or additional issue".*

Advocate Elisaria Mosha alleged other illegalities in the High Court Judgment which are apparent on the face of it to wit, upholding the Hon. Arbitrator's decision basing on only single **exhibit P1** (daily forklift checklist dated **21st September 2016**) while ignoring the rest of other 10 exhibits and without assigning reasons for rejecting other pieces of evidence. In his view, this constitute an illegality to be considered by the Court of Appeal.

In reply to the Applicant's submissions, Advocate Ruben Robert started by challenging the contents of the affidavit which involved a prayer for extension of time to file letters to request copies of proceedings, judgment and decree while the Chamber summons contains only a prayer to lodge the notice of appeal out of time. According to Advocate Ruben Robert, the Applicant has deviated from his pleadings which

contravenes the long-time principle established in the case of **Yara Tanzania Limited v. Charles Aloyce Msemwa t/a Msemwa Junior Agrovet, Kasim Shodo Mazagaza and Barton Mwaituka Mwalembe (Commercial Casse No. 5 2013 (Unreported)** at page 6, quoting a holding in the Nigerian case of **Mojeed Suara Yusuf Vs Madam Idial Adegoeke SC,15/2002.**

He submitted in the alternative that shall both prayers be maintainable, then the matter is defective for having mixed two prayers in one application which contravenes the principle in **Nuru Ramadhani vs Nuru Abdallah Mbehoma, Land Case Application No. 68 of 2020** where the court of Appeal found it improper for the High Court to mix up prayers catered under different laws.

Submitting on the substance of the application, Advocate Ruben Robert denied existence of any sufficient cause for delay and the accounting of all the days of delay.

In a bid to establish the test as to what amounts to "sufficient cause or sufficient reasons, starting with the issue of illegality, Advocate Ruben Robert agrees with the Applicant on the Principle in **Lyamuya's case**, that where the legality of the decision sought to be challenged is in issue, the same could constitute sufficient reason for extension of time.

However, he disagrees the fact that there is illegality in the decision in Revision Application No. 158 of 2021.

His argument is that the points of illegality listed by the Counsel for the Applicant are not apparent on the face of record as per the principle in the case of **Lyamuya's case** at page 8 referring to the decision in **The Principal Secretary, Ministry of Defence and National Service Versus Devram Valambhia (1992) TLR 387**.

Responding to Applicants assertion that this court ignored the Applicant's framed issues, Advocate Ruben Robert quoted what ground 5 entailed as it appears at page 3 of the Judgment in Labour Revision No. 158 of 2021 thus:-

> *"That the Arbitrator erred in law in dismissing the dispute and the applicants' claimed reliefs."*

Advocate Ruben Robert further reproduced the quotation from page 13-14 of the High Court Judgment stating:-

> *"As for the offences charged, the records show that the offences in the charge sheet tally with the ones tabled before the disciplinary hearing and listed in the termination letter thus, no contradiction was caused to the applicant by the*

respondent. Moreover, there is no law demanding an employer to charge the employee the offences charged in the show cause letter. If no sufficient evidence is available in the offences charged in the termination letter the employer is at liberty to change the offences and charge the employee accordingly, the important this is to serve the employee with charges within reasonable time, something which was not at issue in this revision.

The allegation of sufficient evidence not being tendered, has been determined already in the first ground on substantive fairness.

There was sufficient evidence to prove the allegations against the applicant.

Having made the above analysis and findings, I join hands with the Arbitrators findings that the respondent had valid reason to terminate the applicant and he followed the required procedures."

According to Advocate Ruben Robert, the above quotation clearly shows that the Hon. Judge was analysing evidence in dismissing ground five of the grounds of appeal. In his view, the case of **Alisum Properties Limited** has been cited by the Applicant out of context. He therefore prayed for the court to ignore it as it is a submission from the bar which the court is urged to disregard since it was not even raised in the affidavit.

It is the respondent's contention that, what the applicant terms as illegality is just a make of his own and not illegality apparent the face of the record.

Regarding to the point of **high chances for the appeal to succeed and thus if extension of time is not granted, the applicant will suffer irreparably,** Advocate Ruben Robert argued that irreparable loss has never been a ground for extension of time let alone that the Applicant has never pleaded this ground in his affidavit as to be a sufficient cause for the extension of time to be granted. In his view, the decisions on the long-time established practice that parties are bound by their pleadings is applicable in the current circumstances.

Advocate Ruben Robert recited the **Lyamuya's** list of grounds for extension of time, thus, the applicant must account for all the period of

delay, the delay should not be inordinate, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and if the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged. In his view, since illegality was not apparent, there cannot be any high chances of success hence this ground too must fail and the application be dismissed. In his view, irreparable loss is not among the grounds.

As to whether **all the days of delay were accounted for**, Advocate Ruben Robert faulted the Applicant for having not accounted for the delay from **06th May 2022** when the Judgment was delivered up to **30th May 2022** when his counsel wrote a letter to ask for the status of the case. He contended that no clarification on when did the Applicant obtain the Judgment which prompted him to file the current application on 13th July, 2022.

Advocate Ruben Robert blamed the Applicant on sloppiness and negligence for not appearing in court when the matter was fixed for judgment and for late follow up to the judgment which was delivered on the **06th May, 2022. 30th May, 2022.** He considered the delay from

30th May, 2022 when a letter of inquiry was written to **13th July, 2022** when the Application was lodged as an inordinate delay, not being accounted for but also not justified. In his view, the application must fail for having contravened the principle in the case of **Michael Lessani Kweka v. John Eliafye, (1997) TLR 152** where the court of appeal held at page 153 that a plea of inadvertence is not sufficient to grant extension of time unless in a situation such as where a party putting forward such plea is shown to have acted reasonably diligently to discover the omission and acted promptly to seek remedy for it. He further cited the case of **Elly Peter Sanya Vs Ester Nelson, civil Appeal No. 151 of 2018, Court of Appeal at Mbeya at page 26-28.**

The Applicant filed a rejoinder in which he claimed that the Respondent has not shaken the Applicant's assertion that the Hon. Trial Judge framed a new issue suo moto and determined it without affording parties a right to argue it and that this is a serious point of law to be determined by the Court of Appeal and that it is an error apparent on the face of the record.

Advocate Mosha further claimed that the Respondent has not challenged the argument of upholding the arbitrator's ruling basing on single exhibit leaving aside all other exhibits unconsidered.

Re-joining on the sufficiency of the causes for delay, Advocate Mosha reiterated the submission in chief and denied any negligence on his part.

Having considered the contents of the affidavit of the applicant and the counter affidavit of the respondent plus their written submissions, what follows is the answer to the issue as to **whether the applicant has established sufficient grounds for this court to allow extension of time to lodge an appeal out of time**. Before embarking on this issue, I would like to address the legal issues raised by the Applicant concerning the prayers made in the affidavit without having them in the chamber summons. I agree with the Applicant's counsel that the Applicant has made a new prayer in the Affidavit which is not in the chamber summons. I will ignore the said prayers for having been not part of the chamber summons.

Now comes to the substantive part of the Application. What constitute the centre of the dispute is the issue of awareness of the date when the impugned judgment was delivered. According to Advocate Elisaria Mosha, the said judgment was scheduled to be delivered on **29th April 2022** and instead, it was delivered on **6th May 2022**. The Respondent claims that the judgment was scheduled to come on 29th May 2022 but it was delivered on 6th May 2022. At least I note one thing common

amongst the parties. Whether the judgment was initially scheduled on 29th May 2022 or on 29th April 2022, one common fact is that the said judgment was not delivered on the exact date it was scheduled. It appears none of the parties was aware of the date it was delivered because the Applicant claims that he did not know about it while the respondent claims that he was informed by the court clerk that the said judgment was fixed for delivery on **6th May 2022**. This in my view constitutes a confusion which I should interpret in favour of the Applicant because he affected by it. He has deponed that he was not aware of the date of the delivery of the judgment and he had to make an inquiry by a way of a letter. In my view, this may be a reasonable ground to warrant extension of time.

As to whether the Applicant was negligent, it is the Applicant's explanation that he was served with the impugned judgment on **16th June 2022** after having inquired about the progress of the judgment by a letter. This explanation is vivid in the affidavit and the submission although the respondent's counsel did not notice it. I consider it undisputed and therefore it remains that the applicant was served with the copy of judgment on **16th June 2022** while the instant application was lodged on **13th July 2022** which is about 27 days from the date the applicant obtained the judgment. Advocate Ruben Robert considers

this time as inordinate delay and negligence on the part of the Applicant. Spending 27 days to contemplate on the judgment and to decide on the way forward and prepare and lodge this application in my view is not inordinate time or excessive. It is therefore my finding that there was no negligence punishable by denial of extension of time.

Apart from the confusion caused because of uncertainty in the date when the Judgment was delivered, the Applicant alleged illegality in the impugned decision. Among the illegalities stated is the failure of the High Court to consider all the issues in the application. According to the Applicant, the trial Judge formulated only one issue which was not part of the issues in dispute and addressed it while ignoring the issues raised in the Applicant's affidavit.

Taking note that this court is not an appellate court to determine whether the trial court did ignore some important issues, the consideration of an issue which was not part of the framed issue constitute illigeality if confirmed by an appellate court. Although the Respondent explained extensively on what this Court did in the judgment trying to counter the any error being apparent on the face of the record, I could not see a clear denial that there were unconsidered

issues in the affidavit. It is on this reason I find a point of illegality in place which needs to be determined by the Court of Appeal.

From the above analysis, since the Applicant has managed to establish that there was a confusion concerning the date of the judgment and that there is an alleged point of illegality, the first issue as to whether there are sufficient grounds to justify extension of time is answered affirmatively.

From the foregoing, I find the application with merit and allow it. The Applicant is granted an extension of time to lodge the preferred Notice of Appeal within 21 days from the date of this Ruling. No order as to costs. It is so ordered.

Dated at Dar es Salaam this 24th Day of April 2023

KATARINA REVOCATI MTEULE

JUDGE

24/04/2023