

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 42 OF 2023**

*(Arising from the judgment of the High Court (Hon. S.M. Maghimbi, J) dated 14/9/2022 in Revision  
Application No. 178 of 2021)*

**EZEKIEL O. NYAMU ..... APPLICANT**

**VERSUS**

**THE GOVERNING BOARD OF THE  
COLLEGE OF BUSINESS EDUCATION ..... RESPONDENT**

**RULING**

*Date of last Order: 29/03/2023  
Date of Ruling: 28/4/2023*

**B. E. K. Mganga, J.**

Brief facts of this application are that Ezekiel O. Nyamu, the herein applicant, filed before the Commission for Mediation and Arbitration henceforth CMA Labour dispute No. CMA/DSM/ILA/R.1358/17/03 complaining that he was unfairly terminated by the Governing Board of the College of Business Education, the herein respondent. On 28<sup>th</sup> April 2020, the Arbitrator issued an award that termination of employment of the

applicant was both substantively and procedurally unfair hence awarded the applicant to be reinstated. The Arbitrator awarded applicant also to be paid TZS 111,412,000/= being 46 months' salaries compensation with an increment of TZS 2,442,000/= per month from the date of the award to the date of reinstatement. Respondent was aggrieved with the award as a result, she filed Revision No. 178 of 2021 before this court. On 14<sup>th</sup> September 2022, this court(Hon. S.M. Maghimbi, J) having heard submissions of the parties and considered evidence in the CMA record, held that termination of the applicant was fair both substantively and procedurally. Consequently, the court allowed the application, quashed, and set aside the CMA award.

On 17<sup>th</sup> February 2023, applicant filed this application for extension of time within which to file a Notice of Appeal to the Court of Appeal. In the affidavit in support of the application, applicant stated that a copy of judgment of the court in the aforementioned Revision, was collected on 18<sup>th</sup> October 2022 by Flora Silas, his wife. That, upon receiving the copy of judgment, he fell in a great shock and find himself out of control and fell unconsciousness such that he could not know what was going on. Applicant stated further that, on 30<sup>th</sup> September 2022, he was taken to

Remi Masunga Masuke, a traditional medical practitioner stationed at Chanika within the Region of Dar es Salaam for treatment. The said Remi Masunga Masuke deposed in her affidavit that applicant is her long- term client and that, on 12<sup>th</sup> September 2022 to 29<sup>th</sup> September 2022, applicant attended her clinic as outpatient suffering from stomach ulcers, Hypertension, shingles, and paresis. That, on 30<sup>th</sup> September 2022, she admitted applicant for further treatment but she discharged applicant on 18<sup>th</sup> October 2022 because applicant's wife one Flora Silas informed him that she was taking applicant to their home village for further treatment. Further to that, applicant stated that, he was unconscious until in November 2022, when he recovered while at Kinesi area attending traditional treatment before Meryciana Sagin Zacharia. On the other hand, Meryciana Sagin Zacharia, deposed that she started to treat applicant on 17<sup>th</sup> November 2022 and that applicant stayed at her compound for 29 days.

In his affidavit, applicant deposed further that, he returned in Dar es salaam on 19<sup>th</sup> November 2022 by bus and that, on 23<sup>rd</sup> November 2022, he started to look for an advocate and secured the advocate on 30<sup>th</sup> November 2022. In short, according to applicant's affidavit, the delay was

due to sickness. In his affidavit, applicant also deponed that there are illegalities in the impugned judgment because applicant was not afforded right to be heard in some of the proceedings.

On the other hand, respondent filed both the Notice of Opposition and the counter affidavit of Ambokile A. Mwakaje, State Attorney. It was deponed in the counter affidavit that, applicant was in Court on 14<sup>th</sup> September 2022 at the time the court delivered its judgment in Revision application No. 178 of 2021. It was further deponed in the counter affidavit that the copy of judgment of the said application was collected on 18<sup>th</sup> October 2022 by the applicant who signed in the register to acknowledge receipt and that, the allegation that applicant fell unconscious from 14<sup>th</sup> September 2022 to 17<sup>th</sup> November 2022 cannot be true. It was further deponed in the counter affidavit that applicant was conscious and that on 26<sup>th</sup> September 2022 he filed a notice of review seeking the court to review its decision in Revision application No. 178 of 2021. It was further deponed on behalf of the respondent that the alleged illegality is not apparent on the face of the record.

When the application was called on for hearing, Mr. Boniphace Sariro, learned Advocate, appeared, and argued for and on behalf of the applicant

while Mr. Ambokile Mwakaje, Principal State Attorney and Amina Ngope, State Attorney, appeared and argued for and on behalf of the respondent.

Submitting in support of the application, Mr. Sariro, learned counsel for the applicant submitted that the impugned judgment in Revision No. 178 of 2021 was delivered on 14<sup>th</sup> September 2022 and that applicant filed this application on 17<sup>th</sup> February 2023. He submitted that initially, applicant filed Miscellaneous Application No. 511 of 2022 on 13<sup>th</sup> December 2022 but the same was struck out on 07<sup>th</sup> February 2023.

During hearing, counsel for the applicant dropped illegality as a ground for extension of time. He therefore supported the application based on sickness as reason for the delay. Mr. Sariro submitted that Applicant was sick up to November 2022. Counsel submitted further that Applicant suffered from nervous shock and became unconscious. He went on that, according to the affidavit of the applicant, he was treated by traditional doctors who, also have filed their respective affidavits to that effect. He mentioned the said traditional doctors as Meryciana Sagin Zacharia and Remi Masunga Masuke. When probed by the court as whether, there is proof that the said persons are traditional doctors, counsel for the applicant readily conceded that there are no certificates proving that the two are

traditional doctors. He further conceded that, without their certificates, it is difficult for the Court to know that they are traditional doctors. Counsel for the applicant also conceded that Meryciana Zacharia did not state how she treated the applicant.

Counsel for the applicant submitted that, Remi Masunga Masuke stated in his affidavit that from 12<sup>th</sup> September 2022 to 29<sup>th</sup> September 2022 applicant was attending at his Clinic as outpatient suffering from stomach ulcers, hypertension, shingles, and paresis and that, on 30<sup>th</sup> September 2022, he admitted applicant for further traditional treatment. In his submissions, counsel for the applicant concede that, in his affidavit, applicant did not mention the type of sickness but it was only mentioned by Masunga, the traditional doctor. Counsel for the applicant submitted further that in his affidavit, Remi Masunga Masuke deponed that on 18<sup>th</sup> October 2022 he discharged applicant to attend treatment at applicant's home village and that applicant was taken by Flora Silas. In his submissions, counsel for the applicant conceded that there is no affidavit of the said Flora Silas, the wife of the applicant to that effect. He conceded further that, in his affidavit, applicant did not state the date he travelled to Tarime for treatment. Mr. Siriro was quick to submit that applicant came

back from Tarime on 19<sup>th</sup> November 2022 and that there is a bus ticket to that effect. When probed by the court as to whether the attached ticket to the applicant's affidavit bears the name of the applicant, Mr. Siriro, readily conceded that there is no name of the applicant in the said ticket.

Mr. Siriro learned counsel for the Applicant submitted that according to paragraph 4 of the applicant's affidavit, Applicant got nervous shock after getting information that he lost the case. Counsel conceded that the decree shows that the judgment was delivered on 14<sup>th</sup> September 2022 in presence of the applicant. Counsel for the applicant was quick to cite the case of ***Emmanuel R. Maira v. The District Executive Director of Bunda District Council***, Civil Application No. 66 of 2010, CAT (unreported) and submit that a person cannot be blamed for health matters and that sickness is a ground for extension of time. Counsel for the applicant submitted further that, in the application at hand, the Court is only required to satisfy itself whether applicant has adduced sufficient reason for the delay or not.

Counsel for the applicant submitted further that Applicant travelled from Tarime on 19<sup>th</sup> November 2022 and that on 23<sup>rd</sup> November 2022 he started to look for an Advocate and managed to secure him on 30<sup>th</sup>

November 2022 as a result, he filed Miscellaneous Application No. 511 of 2022 on 13<sup>th</sup> December 2022. Counsel argued that, from 19<sup>th</sup> November 2022 to 13<sup>th</sup> December 2022 is 24 days. In his submissions, counsel for the applicant conceded that, applicant did not account for the delay from 01<sup>st</sup> December 2022 to 13<sup>th</sup> December 2022. He conceded also that applicant did not account in his affidavit the delay from 07<sup>th</sup> February 2023 when Miscellaneous application No. 511 of 2022 was struck out to 17<sup>th</sup> February 2023, the date of filing this application. Counsel concluded his submissions praying that the application be granted.

Resisting the application, Mr. Mwakaje, learned Principal State Attorney submitted that granting or dismissing the application for extension of time is discretion of the court. He added that, for the application to be granted, there must be sufficient grounds. Learned State Attorney submitted that Applicant has not established sufficient or good reason and that applicant has failed to account for each day of the delay. Counsel for the respondent submitted that applicant did not account for 12 days after securing an Advocate and 9 days from the date he was served with the order striking out Miscellaneous Application No. 511 of 2022 to the date of filing this application. Counsel for the respondent cited the case of



***Ramadhani J. Kihwani V. TAZARA***, Civil Application No. 401/18 of 2018, CAT (unreported) to support his submissions that a delay even a single day must be accounted for.

Responding on submissions relating to sickness as a ground for the delay, Mr. Mwakaje submitted that, sickness, if any, did not cover the whole period mentioned in the Applicant's affidavit. Counsel for the respondent submitted further that the application is an afterthought because on 26<sup>th</sup> September 2022 that is to say, 12 days after delivery of the impugned judgment, applicant filed a notice of Review to challenge the decision of the Court. He added that the notice for Review is pending and has not been withdrawn in terms of Rule 34 of GN. No. 106 of 2007. Counsel for the respondent submitted that the contention that applicant was unconscious sick is not true.

Counsel for the respondent submitted further that on 18<sup>th</sup> October 2022, applicant, personally collected the copy of judgment from Court as evidenced by the Court Register (annexture CBE1 ) to the counter affidavit. Counsel for the respondent submitted that, it is not true that the judgment was collected by applicant's wife one Flora Silas. He added that argument that the copy of judgment was collected by Frola Silas should be rejected

as there is no her affidavit. Counsel for the respondent cited the case of ***Mzee Mohammed Akida & 7 Others V. Low Shek Kon & 2 Others***, Civil Application No. 481/17 of 2017 CAT (unreported) to support his submissions.

Counsel for the respondent referred to paragraph 10 of applicant's affidavit wherein applicant stated that there is a greater chance of success and submit that chance of success is not a ground of granting an application. He cited the case of ***Airtel Tanzania Ltd V. KMJ Telecommunications Ltd***, Civil Application No. 393/16 of 2021 (unreported) to support his submission.

In winding up his submissions, learned Principal State Attorney prayed that the application be dismissed for want of merit.

In rejoinder, counsel for the applicant reiterated his submissions in chief.

I should point the long-honoured principle that, in the application for extension of time like the one at hand, the court is asked to exercise its judicial discretion. See the case of ***Mza RTC Trading Company Limited vs Export Trading Company Limited***, Civil Application No.12 of 2015 [2016] TZCA 12 wherein the Court of Appeal held:-

*"An application for extension of time for the doing of any act authorized ...is on exercise in judicial discretion... judicial discretion is the exercise of judgment by a judge or court **based on what is fair, under the circumstances and guided by the rules and principles of law ...**"*

I should point out that, this being an application emanating from labour dispute, for the court to extend time to the applicant, applicant must adduce sufficient or good cause as provided for under Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007. The said Rule provides:-

*"56 (1) The court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the court is precluded from doing so by any written law."*

In the application at hand, applicant has advanced sickness as a ground for the delay to file the Notice of Appeal to appeal to the Court of Appeal. On the other hand, that ground was highly contested by counsel for the respondent. I have carefully examined evidence of the applicant contained in his affidavit and the affidavit of Meryciana Sagin Zacharia, Remi Masunga Masuke and the counter affidavit of Mwakaje resisting this application and I am of the view that there is no sufficient ground established by the applicant to justify grant of this application. As pointed hereinabove, applicant stated in his affidavit in support of the application that, a copy of the impugned judgement was collected on 18<sup>th</sup> October 2022 by Flora Silas, his wife and that upon receiving it, he fell in a great

shock and became unconscious such that he could not know what was going on. It was also stated in the affidavit of Remi Masunga Masuke that the said Frola Silas is the one who took applicant to the house of Remi Masunga Masuke for treatment and thereafter took him therefrom to Tarime to be treated by Meryciana Sagin Zacharia. It was correctly submitted by learned State Attorney that there is no affidavit of Frola Silas and that any reference to what was allegedly done by the said Frola Silas should be ignored. I agree with that submission because there is a plethora of case law that an affidavit which mentions another person is hearsay unless that other person swears as well. Some of these decisions are *Sabena Technics Dar Limited v. Michael J. Luwunzu*, Civil Application No. 451/18 of 2020, CAT (unreported), *Franconia Investments Ltd v. TIB Development Bank Ltd*, Civil Application No. 270/01 of 2020, *Mzee Mohammed Akida & Others vs Low Shek Kon & Others* (Civil Application 481 of 2017) [2023] TZCA 36, ***Benedict Kimwaga v. Principal Secretary Ministry of Health***, Civil Application No. 31 of 200, ***NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd***, Civil Application No. 13 of 2002 (all unreported) to mention but a few.

While applicant stated that the copy of the impugned judgment was collected on 18<sup>th</sup> October 2022 by Frola Silas who has no affidavit, the respondent filed a counter affidavit showing that the judgment was delivered on 14<sup>th</sup> September 2022 in the presence of the applicant and further that, the copy of the judgment was collected by the applicant on 18<sup>th</sup> October 2022. I have examined annexure CBE1 and find that the copy of the judgment was collected by the applicant on 18<sup>th</sup> October 2022 and not Frola Silas as was stated by the applicant in his affidavit in support of the application. There is no evidence to disapprove what was deposed by the respondent in the counter affidavit that the said judgment was collected by the applicant personally. In short, applicant told lies in his affidavit.

It was further deposed by Mr. Mwakaje in his counter affidavit resisting the application that on 26<sup>th</sup> September 2022 applicant filed a notice of review seeking the court to review its decision in Revision application No. 178 of 2021. Respondent annexed the Notice of Review(annexture CBE 3) to the counter affidavit to that effect. I have examined the said notice of Review(annexture CBE 3) to the counter affidavit and find that the same

was signed by the applicant. That evidence was also not countered by the applicant.

In my view, the whole story that applicant fell unconscious after receiving the copy of the judgment from Frola Silas, who allegedly collected it from the court, is full of lies. Court proceedings dated 14<sup>th</sup> September 2022 the date the judgment was delivered, Annexure CBE 2 to the counter affidavit shows that the impugned judgment was delivered in the presence of the applicant. Even the affidavit of Remi Masunga cannot be true because she deponed that on 30<sup>th</sup> September 2022, she admitted applicant for further treatment but she discharged him on 18<sup>th</sup> October 2022 after prayer of applicant's wife one Flora Silas who informed her that she was taking applicant to their home village for further treatment. But in his affidavit, applicant stated that he was unconscious until in November 2022, when he recovered while at Kinesi area attending traditional treatment before Meryciana Sagin Zacharia. Now, having found that on 18<sup>th</sup> October 2022 applicant collected personally from the court the impugned judgment as pointed hereinabove, the whole allegation that applicant was unconscious up to November 2022 is a naked lie. It cannot be said that applicant became conscious only on 18<sup>th</sup> October 2022 just to

enable him to collect the copy of judgment from the court as per annexure CBE1 to the counter affidavit and thereafter became unconscious so that he can be sent to Tarime to be treated by Meryciana Sagin Zacharia. In my view, there is falsity in the affidavit of the applicant and supporting affidavits thereto. Affidavits containing lies cannot be acted upon as it was held by the Court of Appeal in the case of [Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another](#), Civil Application No. 392 of 2020) [2021] TZCA 62 and this court in the case of [Cashsales Stores Ltd vs. Damas Njowi & Another](#) (Rev. Appl 197 of 2022) [2022] TZHCLD 970. In [Jaliya's case](#) (supra) the Court of Appeal held:-

*"It is elementary that an affidavit that contains material falsehood cannot be acted upon: see, for instance, **Ignazio Messina v. Willow Investments SPRL**, Civil Application No. 21 of 2001; and **Kidodi Sugar Estates & 5 Others v. Tanga Petroleum Company Ltd.**, Civil Application No. 110 of 2009 (both unreported)"*

The Court of Appeal went on to quote what it held in **Ignazio Messina** (supra) that:

*"An affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support an application. False evidence cannot be acted upon to resolve any issue."*

In [Jaliya's case](#), the Court of Appeal concluded: -

*"In the premises, I find it unsafe to act on the supporting affidavit that patently contains substantial untruths tending to muddy the waters but work in favour of the applicant."*

The claim that applicant was sent to Tarime for treatment is also not supported by evidence. There is no proof that the said Meryciana Sagin Zacharia is a traditional doctor and that she resides in Tarime. In addition, the alleged bus ticket attached to the applicant's affidavit does not bear applicant's name. In short, there is no proof that applicant travelled to Tarime for treatment. I therefore hold that ***Maira case***(supra) cited by the applicant is not applicable in the circumstances of the application at hand.

It was submitted by the learned Principal State Attorney that applicant did not account for 12 days after securing an Advocate and 9 days from the date he was served with the order striking out Miscellaneous Application No. 511 of 2022 to the date of filing this application. In fact, counsel for the applicant correctly conceded that applicant did not account for each day of the delay. It has been held several times by this court and the Court of appeal that in an application for extension of time, applicant must account for each day



of the delay even if it is a single day. See [Ramadhani J. Kihwani vs TAZARA](#) (Civil Application 401 of 2018) [2019] TZCA 17, [Costantino Victor John vs Muhimbili National Hospital](#) (Civil Application 214 of 2020) [2021] TZCA 77, [Muse Zongori Kisere vs Richard Kisika Mugendi & Others](#) (Civil Application 244 of 2019) [2022] TZCA 640 and ***Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007*** (Unreported) to mention just a few.

For all what I have pointed hereinabove, I find that the application is not merited. I therefore dismiss it.

Dated at Dar es Salaam on this 28<sup>th</sup> April 2023.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 28<sup>th</sup> April 2023 in chambers in the presence of Ambokile Mwakaje, Principal State Attorney for the Respondent but in the absence of the Applicant.



B. E. K. Mganga  
**JUDGE**