

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION  
AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 63 OF 2023**

*(Arising from the judgment of this court (Hon. Rwizile, J) dated 13/12/2022 in Revision No. 241 of 2022)*

**EDWARD LAWRENCE MMBAGA.....APPLICANT**

**VERSUS**

**FMJ HARDWARE LIMITED.....RESPONDENT**

**RULING**

*Date of last order: 19/04/2023*

*Date of Ruling: 27/04/2023*

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

Brief facts of this application are that, applicant filed the dispute before the commission for Mediation and Arbitration complaining that respondent terminated his employment unfairly. The arbitrator at CMA dismissed the dispute filed by the applicant for want of merit. Aggrieved with the CMA award, applicant filed Revision No.241 of 2022 before this court. On 13<sup>th</sup> December 2022, this Court (Hon. Rwizile, J) having heard submissions of the parties and considered evidence in the CMA record, dismissed the application for want of merit. On 24<sup>th</sup> February 2023, applicant filed this application seeking the court to extend time within which applicant can file a Notice of Appeal so that he can appeal to the Court of Appeal.

In support of the Notice of Application, applicant filed his affidavit stating that the copy of judgment was supplied to him on 23<sup>rd</sup> December 2022. Applicant stated further that he did not file the notice within time because it was end of the year and that his advocate was on vacation at Kilimanjaro nursing his parents who were sick and promised to be back on 15<sup>th</sup> January 2023. Applicant stated further that he tried to find another advocate without success because at end of the year offices of the advocates were closed.

In opposing the application, respondent filed both the Notice of Opposition and the Counter Affidavit affirmed by Fatina Senzota Saidi, her Executive Director. In the counter affidavit, the deponent stated that applicant has failed to adduce good reason that prevented him to file the notice of appeal from January 2023 to 7<sup>th</sup> March 2023.

When the application was called on for hearing, Mr. Deo Ukani Ngusaru, advocate, appeared and argued for and on behalf of the applicant while Mr. Edwin Somoka Nkalani, advocate, appeared and argued for and on behalf of the respondent.

Arguing in support of the application, Mr. Ngusaru, learned counsel for the applicant, submitted that Applicant delayed to file the Notice of Appeal because the decision was issued during Court vacation that started on 15<sup>th</sup> December 2022. Mr. Ngusaru submitted that

Applicant was supposed to file the Notice of appeal within 30 days and that the said 30 days expired on 13<sup>th</sup> January 2023. He went on that Applicant filed the application on 27<sup>th</sup> January 2023. When probed by the court as to whether there is a paragraph in the applicant's affidavit showing that applicant filed the application on 27<sup>th</sup> January 2023, he readily conceded that there is none. Counsel for the applicant submitted that applicant filed this application on 8<sup>th</sup> March 2023 being out of time for 54 days. Briefly as he was, counsel for the applicant prayed the court to grant the application.

Resisting the application, Mr. Nkalani learned advocate for the respondent submitted that on 15<sup>th</sup> February 2023 this Court struck out Miscellaneous Application No. 23 of 2023 file by the Applicant for being incompetent. He went on that; Applicant filed this application on 8<sup>th</sup> March 2023 to challenging the decision of the Court dated 13<sup>th</sup> December 2022. Counsel for the respondent submitted further that Applicant has failed to adduce reasons for the delay and also has failed to account for each day of the delay. To support his submissions, counsel for the respondent cited the case of ***Mahawi Enterprises Limited v. Serengeti Breweries Limited***, Miscellaneous Commercial Application No. 24 of 2020, HC (unreported). He added that, applicant

has failed to account for each day of the delay for 54 days and prayed that the application be dismissed for want of merit.

In rejoinder, Mr. Ngusaru learned counsel for the applicant submitted that based on this Court's order issued on 15<sup>th</sup> February 2023, it is not true that Applicant was out of time for 54 days. In his submissions, counsel for the applicant conceded that Applicant has not accounted for each day of the delay. He however, submitted and prayed that for the interest of justice, the application be granted.

In the application for extension of time like the one at hand, the court is called to exercise its discretion. The discretion itself must be exercised judiciously. See [\*Mza RTC Trading Company Limited vs Export Trading Company Limited\*](#), Civil Application No.12 of 2015 [2016] TZCA 12 and [\*Cashsales Stores Ltd vs. Damas Njowi & Another\*](#) (Rev. Appl 197 of 2022) [2022] TZHCLD 970. In order for the court to exercise its discretion properly, applicant must adduce good grounds/ reason for the delay.

The only reason advanced by the applicant for the delay is that the judgment of the court was delivered at the end of the year when advocate for the applicant was on vacation at Kilimanjaro nursing his parents who were sick and promised to be back on 15<sup>th</sup> January 2023.

The other reason connected to that is that, applicant failed to secure another advocate because their offices were closed. I have considered these reasons and in my view, they are not sufficient to warrant this court to grant extension of time. The contention that counsel for the applicant was in Kilimanjaro nursing his parents is not supported by an affidavit of the applicant's advocate hence it is hearsay that cannot be acted upon by the court. See the case of *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 and *Mzee Mohammed Akida & Others vs Low Shek Kon & Others* (Civil Application 481 of 2017) [2023] TZCA 36 to mention but a few. Again, there is no proof that all advocates closed their offices at that time.

Applicant was supposed to provide relevant material in order to move the court to exercise its discretion as it was held in the case of *Victoria Real Estate Development Ltd vs Tanzania Investment Bank & Others* (Civil Application 225 of 2014) [2015] TZCA 354, *Rose Irene Mbwete vs Phoebe Martin Kyomo* (Civil Application 70 of 2019) [2023] TZCA 111, *Omary Shaban Nyambu vs Dodoma Water & Sewerage Authority* (Civil Application 146 of 2016) [2016] TZCA 892, and *Oswald Masatu Mwizarubi v. Tanzania Fish Processing*

**Ltd**, Civil Application No. 13 of 2010, CAT(unreported) to mention but a few. Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 requires the applicant to adduce good / sufficient ground for the court to extend time. In the application at hand, applicant has failed to provide relevant material sufficient to warrant the court to grant the application.

Applicant has associated the delay with vacation of his counsel and sickness of his counsel's parents. That ground also cannot help the applicant because blames to the applicant's advocate cannot be accepted as a ground for extension of time as it was held in the case of [Mussa S. Msangi & Another vs Anna Peter Mkomea](#) (Civil Application 188 of 2019) [2021] TZCA 315. In [Mkomea's case](#)(supra), it was held by the Court of Appeal inter-alia that:-

*"...It is also a considered view of the Court that **the attempt by the applicants to throw the blame on their former advocate cannot be accepted and it does not relieve them from being held responsible for whatever snag their wish to challenge the High Court decision is encountering.** Ignorance by an advocate of what procedure needed to be followed and the changing of hands of a case between different advocates does not constitute a good case for extension of time..."*  
(Emphasis is mine).

It has been held several times by this court and the Court of Appeal that in the application for extension of time, applicant must account for each day of the delay. It was correctly submitted by counsel for the respondent that applicant has not accounted for each day of the

delay even from 15<sup>th</sup> February 2023 the date Miscellaneous Application No. 23 of 2023 was struck out for being incompetent to 24<sup>th</sup> February 2023 the date he filed this application electronically. There is a litany of case law that delay even of a single day must be accounted. See [Omari R. Ibrahim vs Ndege Commercial Services Ltd](#) (Civil Application 83 of 2020) [2021] TZCA 64 and [CRDB Bank Ltd PLC vs Victoria General Supply Co. Ltd](#) (Civil Application 319 of 2019) [2019] TZCA 457.

For the foregoing, I dismiss this application for want of merit.

Dated at Dar es Salaam on this 27<sup>th</sup> April 2023.



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

Ruling delivered on this 27<sup>th</sup> April 2023 in chambers in the presence of Dorothy Mkwizu, Advocate for the Respondent but in absence of the Applicant.



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