

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

MISCELLENEOUS LABOUR APPLICATION NO. 389 OF 2022

(Arising from the decision of the Commission for Mediation and Arbitration of Dar es Salaam at Ilala dated 6TH January 2015 in Labour Dispute No. CMA/DSM/ILA/R273/2014/1267)

JENNIFER MLONDEZI.....1ST APPLICANT
DORICE NDAHANI2ND APPLICANT
RUKIA SEIF3RD APPLICANT
PERPETUA ABEL4TH APPLICANT

VERSUS

EBRAHIM HAJI CHARITABLE CENTRERESPONDENT

RULING

K. T. R. MTEULE, J.

02nd May 2023 & 10th May 2023

This is an application for extension of time to lodge a revision application against the decision of the CMA in **Labour Dispute No CMA/DSM/ILA/R273/2014/1267**. The reasons for delay in filing the said labour dispute according to the affidavit is the fact that the Applicants have been in court corridors all the time in search of justice from the date when the matter was concluded in the CMA to the date when this matter was filed. The affidavit narrated a long story of court events encompassing various applications which the applicants claim to

have occupied their time making it difficult to have the intended revision application filed timely.

The application was heard by written submissions. The Applicants reiterated what is contained in the affidavit and insisted that their delay to lodge the revision was caused by their involvement in the matters pending in this court since the time of delivery of the impugned decision.

In reply submissions, the respondents counsel contended that the instant application is devoid of merit as the applicant has failed to satisfy the conditions for extension of time as it was laid down in the case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (2011) TZCA 4 [TANZILI]** where it was established that the applicant must account for all the period of delay, the delay must not be ordinate and that the applicant must show diligence.

According to the Respondent's counsel, the applicants have failed to account for each day of delay as was stated by the court in **Bushiri Hassan v Katifa Luklo Mashayo, Civil Application No. 3 of 2007(Unreported)** cited in the case of **Wambele Mumwa Shahame**

vs. Mohamed Hamis Civil Reference No. 8 of 2016 (2018] TZCA

39 where the court held that:

"Delay even of a single day has to be accounted for otherwise there would be no point of having rules prescribing periods with which certain steps have to be taken"

Identifying an unaccounted period of delay, the Respondent's counsel referred to **Application No. 211 of 2019** which was dismissed but the applicants filed another application on the **11th day of October 2022** after expiry of three years and such period of delay, has not been accounted for according to the Respondent's counsel.

According to the Applicant's counsel, the delay in the instant application is inordinate, and has been attributed by negligence on the part of the applicants, which does not amount to reasonable delay to warrant extension of time.

He submitted that the case of **Convergence Wireless Networks (Mauritius) United and 3 others v WA Group United and 2 others Civil Application No. 263 of 2015, Court of Appeal of Tanzania, (Unreported)** cited by the Applicant cannot rescue the applicant because that case involved illegality as among the grounds for extension of time.

It is the view of the Respondent's view that the Applicants have not established a reasonable and good cause to warrant extension of time and therefore, the application deserves dismissal with costs.

From the parties' submissions, the issue before me is whether the Applicants have established sufficient grounds for this Court to grant extension of time to lodge revision application against the decision of this court dated **6th January 2015**. The Applicants have narrated a long list of the matters which have been pending in this court. I have discovered that they were once granted with extension of time by an order of this court dated **25 September 2020**. The granting of extension of time on this date means that the period between **25th September 2020** and **6th January 2015** was duly accounted for and I see no reason to go back to that period. I will consider a period between **25th September 2020** when the former extension of time was granted to the present moment and find out as to whether that period is accounted for. The order of **25th September 2020** allowed 30 days extension of time to file the revisions and the applicants complied with the order by filing the said revision application on **12 October 2020** vide **Revision Application No. 407 of 2020**. On **20 July 2021** this application was struck out before Hon. Mganga, J with leave to refile. It appears that another application for revision was lodged timely vide

Revision Application No. 297 of 2021 but is as well suffered a striking out on **8 September 2021** due to defective affidavit. They refiled the said application which was struck out on **18th May 2022** without a leave to refile. The Applicants started application for extension of time which was again struck out for being incompetent due to defective notice of application hence this application.

In his submission the respondents challenged only a period between **2019 to 11th October 2022** as unaccounted period.

I have gone through the applicants' affidavit, it appears that the applicant has truly been in court for all the time since the date they obtained the CMA award but they have been getting a knock out due to technical errors in the applications. In principle this is called a technical delay which is not punishable by a refusal of extension of time. (See **Bank M (Tanzania) Limited versus Enock Mwakyusa Civil Application No. 520/18 Of 2017. In this case, the Court of Appeal stated:-**

"In **Fortunatus Masha** (supra) a single justice of the Court had put it this way at p. 155:

"... a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time, but the present

*situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. **The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal.** In fact in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal."*

" " [Emphasis supplied].

I subscribe to the view taken by the Court in the above cases. The applicant Bank, having been duly penalized by having Civil Appeal No. 109 of 2012 struck out by the Court and the High Court (Labour Division) dismissing Miscellaneous Application No. 133 of 2017, the same cannot be used yet again to determine the timeousness of applying for filing the fresh Notice of Appeal in a bid to file a fresh appeal."

From the above holding of the Court, negligence committed by a party in bringing defective pleadings is penalized by an order to strike out the matter.

Much as I agree with the Respondents counsel regarding the principle in **Lyamuya Construction** cited supra, when the grounds for extension of time involves technical delay, the court should consider it as an excuse. This does not condone the negligence of committing technical

errors in filing an application, but the essence is to facilitate attainment of substantive justice to a person who erred technically to get an opportunity to be heard on the substance of the matter. The negligence is not punishable by refusal of extension of time.

From the foregoing, it is my finding that the nature of the delay in this matter is a technical delay which is excusable in extending time to take a court action. As such, the issue framed is answered affirmatively that the Applicants have managed to establish sufficient ground to justify extension of time. Consequently, the application is granted. The revision application must be filed within 14 days from the date of this Ruling. It is so ordered.

Dated at Dar es Salaam this 10th Day of May 2023




KATARINA REVOCATI MTEULE

JUDGE

10/05/2023