

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

LABOUR APPLICATION NO. 07 OF 2022

*(Arising from Labor Revision Application No. 64 of 2018 High Court, Mwanza and
CMA/MZA/NYAM/68,69,70,71/2013 before the CMA, Mwanza)*

IVONA MUZANILA & ANOTHER APPLICANT

VERSUS

BANK M TANZANIA LIMITED RESPONDENT

RULING

8th February and 10th March 2023

ITEMBA, J.

In this application the applicants Ivona Muzanila and Linda Lugano are moving the court to grant an extension of time in which to file revision application. Brief facts leading to this application are that; before the Commission for Mediation and Arbitration (CMA), the applicants filed consolidated applications no. CMA/MZA/NYAM/68,69,70,71/2018 against the respondent. After the hearing, an award was issued in the respondent's favor. The applicants were aggrieved and moved this court through revision application no. 64 of 2018 to revise the said award. The High Court, on 16/7/2019 struck the said revision application for being incompetent. The applicants are still intending to pursue their rights in

applying for revision against the CMA, however, they have found themselves out of time, hence this application.

When the application was scheduled for hearing, the applicant appeared in person and prayed for the hearing to be by way of writing, a prayer which was welcomed by the respondent's counsel Mr. Bitunu Msangi.

According to the applicants' affidavit in support of the application, the main reason for the delay are two; **First**, the High Court file in Revision Application no. 64 of 2018 was missing in the High court registry for more than one year despite several follow ups made by the applicant. She avers further that on 23rd September 2021, she got only the copies of proceedings and in December 2020 she was informed orally that the missing file was found but by then, his counsel had already been employed in a mining company and no longer in his former office. **Secondly**, the applicant herself, Ivona Muzanila was taking care of her sick parents in Bukoba between September and December 2021 and his father died in December. Thereafter, she tried to process the application but even at the counsel's office, the file could not be easily traced until 17/3/2022. That,

she managed to file the application on 25/3/2022 and they were instructed to file a copy in Kiswahili which they managed to file on 30/3/2022. The applicant argued that the ground of sickness is reasonable and it was considered in the case of **Leonard Magesa v M/s Olam (T) Ltd** Civil Application no. 11 of 2015 CAT (DSM). The applicant finalized by stating that the grounds for revision are illegality because the procedure for their termination was unlawful.

In rebuttal, the respondents strongly objected the application. The respondent's counsel stated that the applicant could not adduce sufficient reasons for the delay as the law requires. He argued that there are two grounds advanced by the applicant the one of missing file and the applicant's parents' sickness but both grounds do not carry any weight because the law requires the applicant to account for each day of delay as it was held in **Praygod Mbaga v The Government of Kenya** and 2 others [2019] 1 T.L.R 629. That, the applicant could not explain as to how her parents' sickness stopped her from filing her case within time because she was not at the hospital full time. He concluded that failure to account for each day of delay is like failing to justify the grounds for extension. The respondent also distinguished the case cited by the applicant of **Leonard**

Magesa v M/s Olam (T) Ltd Civil Application no. 11 of 2015 CAT (DSM)

because in that case it was the applicant who was sick and not their parents.

The respondent's counsel argued further that Ivona was not the only person who was the applicant. That, the second applicant Lugano or even their counsel could have made follow up and file the application in time. In respect of the missing file, the respondent's counsel argued that the said ground is not supported by any evidence including the affidavit of the court clerk.

In rejoinder the applicant insisted that sickness is a strong ground for the court to grant extension as the applicant is the only child and she is a Christian who could not neglect her parents and she is aware of the 4th commandment which requires children to respect their parents. That, her parents were treated at Bukoba Hospital and later at Bugando hospital. That, the second applicant Linda Lugano could not make the follow up because since the beginning of the labour dispute it was Ivona Muzanila who was given the right to represent others after the disputes were consolidated. She also stated that it was not easy to move the court clerk

who lost the file to swear an affidavit to that effect. The only remedy was to file the present application.

Having utterly considered court's records and parties' affidavits, counter affidavit and submissions, the main issue is whether the application is meritorious.

To begin with, I find it instructive to reiterate, as a matter of a general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the court. But that discretion should judiciously be exercised according to the rules of reason and justice. In the case of **Mbogo vrs. Shah (1968) EA** the defunct Court of Appeal for Eastern Africa held inter that

"All relevant factors must be taken into account in deciding how to exercise discretion to extend time. These factors include the length of the delay, reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the appeal and the degree of prejudice to the defendant if the time is extended".

The main grounds raised by the applicant are that the file was not found in the High Court registry, that the applicant was taking care of her sick parents in September, 2021 and further the applicant's father died in December, 2021 and that there is illegality in that the termination procedure was unlawful.

In respect of the first ground, I have the following observations. If the applicant is praying for extension of time and raising the ground that the relevant file was missing in the High Court registry, she was supposed to support her claims with evidence. According to the 1st applicant, the duration which the file was missing is more than one year. I believe that, missing of a file for more than a year being a serious matter and it cannot be brought before the court without any support. The applicant who is ably represented cannot simply table before court the issue of missing file based on mere words. It was important to support such allegation with evidence from a court official who had knowledge of such file disappearance. The court clerk mentioned in the affidavit (Felister) could have prepared an affidavit in support of the applicant's allegations. If the said court clerk was reluctant as claimed by the applicant, even the Deputy Registrar who is actually in charge of the registry would have been the best person to

prepare an affidavit. I find this ground to be fruitless as it is based on mere allegations.

In respect of the second ground, I would agree that sickness is a valid ground for the court to grant extension of time. Still, the applicant was not the one who was sick but her parents. As rightly stated by the respondent's counsel, she could still have organised for the application to be filed within time especially through the use of the second applicant or even their counsel. There was no reason whatsoever for Linda Lugano not making follow ups of this application because follow up can be done by any interested party for the purpose of ensuring that the application itself is in time. Nevertheless, even if this court will consider this ground as meritorious, the applicant's parents were sick between September and December which is the duration of three months but this application is delayed for more than one year. The rest of the days still remain unaccounted for.

It is settled that, any applicant seeking for extension of time is required to account for each day of delay. The Court of Appeal has reiterated this position in a number of cases including **Bushiri Hassan v**

Latifa Lukio Mashayo, Civil Application No. 03 of 2007, (unreported).

Where the Court observed that:

'..... Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken". [Emphasis added].

See also: **Airtel Tanzania Limited v Misterlight Electrical Installation Company Limited and another** Civil Application no.37/01 of 2020 (CAT) Dar es salaam.

As to the issue of illegality, it is trite law that illegality should be apparent on the face of records. I find that the issue of noncompliance of termination procedures is not an aspect which can be traced on the face of records.

In the premises, it is justified to conclude that, the applicant sat on her rights for so long and they have failed to demonstrated any good and sufficient cause that would entitle them the extension of time to file revision application before this court. Therefore, the application is

dismissed. As the application emanates from labour disputes there are no orders as to costs.

It is accordingly ordered.

Right of appeal explained.

Dated at **MWANZA** this 10th day of March 2023.



L. J. ITEMBA
JUDGE

Ruling delivered in the presence of the Ms. Ivona Muzanila 1st applicant, Mr. Elias Hezron counsel for the respondent also holding brief for Mr. Alfred Daniel counsel for the applicant and Ms. Gladness Mnjari, RMA.



L. J. ITEMBA
JUDGE
10.3.2023