

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**AT MOROGORO**

**MISC. LABOUR APPLICATION NO. 2 OF 2023**

*(Originating from Labour Commissioners Order dated 25<sup>th</sup> March 2022)*

**THE REGISTERED TRUSTEES OF EVANGELICAL LUTHERAN CHURCH IN  
TANZANIA ..... APPLICANT**

**VERSUS**

**THE LABOUR COMMISSIONER ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last order: 07/03/2023

Date of ruling: 23/03/2023

**MALATA, J**

This is a ruling in respect to an application for extension of time preferred under Section 48(3) of the Labour Institution Act (here in to be referred as L.I.A) Cap 300 R.E 2019 and Rules 56(1), 24(1) (2) (a) (b) (c) (d) (e) (f) (3) (a) (b) (c) (d) of the Labour Court Rules, 2007 GN NO 106/ 2007.

The applicant being aggrieved by the Labour Commissioner's Order dated 25<sup>th</sup> March 2022, filed Labour Revision no. 12 of 2022 which encountered preliminary objection from the Respondents, that the revision was untenable in law for non-joinder of the Attorney General as a necessary party, the preliminary objection was sustained and the revision was struck out on 08<sup>th</sup> September 2022.

On 10/02/2023, the applicant filed in this court, an application for extension of time within to file an appeal against the Labour Commissioner's Order.

Before me, the applicant was represented by Mr. Azael Mweteni, learned counsel while the respondents were represented by Mr. Exavery Ndalaha, learned Senior State Attorney.

Submitting in support of the application, Mr Mweteni started by adopting the affidavit as evidence in support of the application. He stated that the applicant had filed application for revision within time, however, it was struck out for want of joining the Attorney General. Following the striking out of the application, the applicant was already time barred to refile it, thence the present application for extension of time to appeal. He submitted that, this court delivered its ruling on 8<sup>th</sup> September, 2022 and the ruling was served to the applicant on 22<sup>nd</sup> December, 2022 and this

application was filed on 10<sup>th</sup> February, 2023. He submitted that, the reason for delay is stated in paragraph 3 of the affidavit, that the delay was due to technical delay which resulted into striking out the revision. Further, he submitted that, other reasons for extension of time is the presence of irregularities and illegalities as stated in the affidavit. He thus concluded by submitting that, this application has all reasons for it to granted.

In reply thereof, Mr. Ndalaha, learned Senior State attorney started by adopting the counter affidavit in opposition of the application.

He further stated that the affidavit doesn't state the number of days the applicant delayed. However, counting from the date of decision by Hon. Chaba on 08/09/2022 to the date of filing of this application the applicant is late for more than 155 days, the applicant failed to account for such number of days. Further counting from the alleged date of receipt of decision by the Hon. Chaba, J that is on 22/12/2022 to the date of filing this application on 10/02/2023, it is clear fifty (50) days have expired. Mr. Ndalaha submitted that, litigation must come to an end to enable the decree holder to benefit from it, to emphasise the point he cited the case of **Sebastian Ndaula vs. Grace Rwamata**, Civil Appeal no. 4 of 2014, Court of Appeal (unreported).

He further submitted that the affidavit is silent and the applicant has failed to account and state for each day of delay. Mr. Ndalaha also cited the case of **Tanzania Coffee Board vs. Rombo Millers Ltd**, Civil Application no. 13 of 2015, Court of Appeal (unreported) at page 11 of the ruling the court of appeal where the court principled that, the applicant has to account for each day of delay, and in the present case the applicant has failed to discharge that duty. He also argued that, there is allegation of illegalities but no description as to alleged and irregularities and illegalities. Finally, he submitted that, the applicant has failed to account for the delay, thus this application is devoid of merit and it be dismissed.

In the rejoinder submission, Mr. Mweteni, the learned counsel for the applicant stated that the Labour Commissioner's decision speaks for itself that it was received by the applicant on 27/04/2022, and the same is part of this application.

As to the failure to state number of days and on account of each day of delay, he submitted that the reasons for delay is well elucidated in the affidavit and admitted that, there is no description as to what is all about irregularities and illegalities. Finally, he prayed that, the application be granted

Having heard and considered the arguments from both sides, it is undisputed that although the court's powers to extend time under Rule 56(1) of the Rules is both broad and discretionary one but has to be exercised judiciously. Rule provides that;

*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"***

The gist of the provision is that, under rule 56 such power can only be exercised where good cause is shown. Having considered what is before me, I am of the view that, the crucial point for determination is whether there is a good cause for condonation, thence extension of time.

Certainly, there are no laid down variables or a clear definition of the phrase "good cause" when exercising the discretion under Rule 56(1) of the Rules. However, there are factors which the court considers when determining such kind of an application. This includes but not limited to:

1. the length of the delay;
2. the reasons for the delay;
3. the degree of prejudice the respondent stands to suffer if time is extended;

4. whether the applicant was diligent; and
5. whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged.
6. accounting each day of delay even a single,

The above principles have been maintained in numerous court decisions, to with, in the **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987, **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 and **Eliya Anderson vs Republic**, Criminal Appeal No. 2 of 2013 and **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (All unreported).

In the present application, the reason for delay advanced by the Applicant is technical delay. I accept that, when a person pursuing his genuine cause in the wrong forum for the purpose of the law of limitation, can be accepted as a technical delay, which otherwise can be distinguished from actual delay.

In this position, I am guided by the principles in the case of **Fortunatus Masha Vs. William Shija and Another** [1997] T.LR 154, where the Court of Appeal had these to say: -

*"Distinction had to be drawn between cases involving real or actual delays and those such as the **present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In this circumstance an extension of time ought to be granted.**"*

From the above cited the case law, in line with the reason adduced by the applicant there was a delay on part of the applicant, which was referred by the applicant to be technical delay. It is true that the copy of the Labour Commissioner's Order was availed to the applicant on 27/04/2022, and the Labour Revision was struck out on 08/09/2022, the copy of the ruling by Hon. Chaba, J was availed to the applicant on 22/12/2022 and the present application was filed on 10/02/2023. From the date when the Labour Revision was struck out on 08/09/2022 to the filing of this application is **155 days**, and from when the copy of the ruling was availed to the applicant i.e. 22/12/2022 there is a delay of **fifty (50) days**.

The applicant is legally required to account for each day of delay of 155 days. However, this court has taken cognizance that, he might have been waiting for a ruling by Hon. Chaba J to be attached to the application for extension. The applicant could have asked the same court which issued the ruling to take judicial notice as it was the same court which did strike out the matter.

Worse still, from issuance of ruling by Hon. Chaba, J on 22/12/2022 to 10/2/2023 when the application was filed, it is a clear fifty (50) days delay which period, the applicant was in possession of all documents but failed to file within the shortest period of time instead filed the application for extension of time after lapse of fifty days for no apparent reason. This court understands clearly that, this kind of application is not the complex one that needed more time to that extent for it to be prepared and filed in court, however it was not the case, as it was not really raised. Further, the applicant did not account for any number of days delayed, let alone attempt.

Mr. Mweteni, the learned counsel for the applicant didn't state what happened for all those days. The applicant was legally required to account for each single day of delay to convince the Court that he did not act negligently or sloppiness. To cement this position, I am guided by the

plethora of authorities of the Court which held that failure by the applicant to account for each day of delay will not trigger the Court to grant the extension of time sought. See **Sebastian Ndaula v. Grace Rwamafa (Legal personal representative of Joshua Rwamafa), (supra), Tanzania Coffee Board v. Rombo Millers Ltd, (supra), Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (all unreported) to mention a few. In Bushiri Hassan for instance, the Court insisted on the need for the applicant seeking an extension of time to account for each and every day of delay where it stated that:

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

Further, the applicant raised ground of illegality praying that, this court be pleased and exercise its discretion power to extend the time based on the same. It is now settled law that illegality of the impugned decision constitutes good cause for purposes of extension of time. In **VIP Engineering and Marketing Limited and 2 Others v. Citibank Tanzania Limited**, Consolidated References Nos. 6, 7 and 8 of 2006 (unreported), the Court stated:

*We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes sufficient reason within the meaning of Rule 8 (now rule 10) of the rules for extending time*

It is from the above observation that illegality has been accepted as the good cause for extension of time, See the case of **Attorney General vs. Consolidated Holdings Corporation and Another**, Civil Application no 26 of 2014 (unreported).

However, the principle of illegality as the ground for extension of time seems to be very wide, and the same had to be expounded in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women Association of Tanzania**, Civil Application no 2 of 2010, where the court stated;

*"Since every party intending to appeal seeks to challenge the decision either on point of law or fact, it cannot in my view, be said that in VALAMBHIA'S Case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raise point of law should as right be granted extension of time if he applies for one. **The court there***

***emphasised that such point of law must be that of sufficient importance and, I would add that it must be apparent on the face of record, such as the question of jurisdiction, not one that would be discovered by long drawn argument."***

The position now that the alleged illegality must be apparent on face of records of the decision intended to be challenged, the Court of Appeal emphasised it in the case of **Tumsifu Kimaro (the Administrator of the Estate of late Eliamini Kimaro) vs. Mohamed Mshindo**, Civil Application no 28/17 of 2017 (unreported). The applicant in this application stated mere words that there is illegality, he failed to show that illegality for the court to assess that there is a point of law important for the court to address.

This court wishes to add that, the presence of illegality is not a sanction for the applicant to sleep in pursuing for his rights timely thinking that, he shall apply at any time he so wishes since there is point of illegalities. Even in the presence of point of illegality, the applicant must take steps at the shortest possible time thus it has to be considered together with other factors as stated in **Lyamuya's** case.

This being a court's supremacies to extend or not, then the presence of illegality cannot be said, it is without condition and limitation. One cannot be left to sleep over his rights for so long, and be expected to be allowed to bring an action at any time so long as there is point of law. To allow that, will be prejudicial to the other party who has been enjoying and developing the land in question after being declared a lawful owner the court. Should either party find aggrieved he is obliged to take immediate action to pursue for his rights.

Leaving illegalities as ground for extension of time uncontrolled and with no limitation will lead to endless litigation. As such, this ground must be discussed with other grounds as stated in **Lyamuya's** case, otherwise, the principle that, litigation must come to end will be a nightmare to be achieved. Consequently, illegality as ground for extension must as well be raised at the earliest possible time.

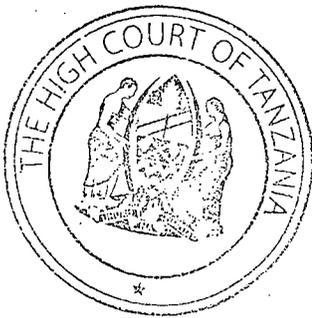
In the circumstances, this court has not been able to gather any sufficient grounds upon which to exercise its discretion powers to grant the sought orders for extension of time. Further, the applicant admitted to have failed to account for each day of delay as such, nothing can be born from nothing.

All said and done, this court is satisfied that, the applicant has failed to discharge his duty of adducing good cause. Thence, the judicial discretionary supremacies cannot be invoked in the circumstances.

In the event and for the afore stated reasons, I find the application is devoid of merits for want of good cause. Consequently, I hereby dismissed it with no orders as costs.

**IT IS SO ORDERED**

**DATED** at **MOROGORO** this 23<sup>rd</sup> March, 2023.



G. P. MALATA

**JUDGE**

23/03/2023