

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

**MISC. LABOUR APPLICATION NO. 19 OF 2022**

*(Arising from the Labour Dispute No. CMA/MZ/SENG/384 & 385/2015, dated 13<sup>th</sup> of October, 2020.)*

**SARAH RICHARD HAMZA ..... APPLICANT**

**VERSUS**

**NMB PLC ..... RESPONDENT**

**RULING**

*23<sup>d</sup> March, & 21<sup>st</sup> July, 2023.*

**ITEMBA, J:**

This court is called upon to exercise its discretion and grant an extension of time for an applicant to file labour revision against the order issued by the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/MZ/SENG/384& 385/2015.

The application is preferred under the provisions of rule 24(1) (2) a, b, c, d, e, and f and rule 24(3) a, b, c and d along with rule 56(1) of the Labour Court Rules of 2007 (G.N No. 106 of 2007) herein under the Rules, and it is supported by an affidavit sworn by the applicant herself. The affidavit states grounds on which the application is based, key among them being that the labour revision (Labour Revision No. 96 of 2020) craved in the initial application was duly lodged on time, but it was struck

out by this court (Hon. Robert, J.), on the ground of incompetency stating that is a applicant averred that following such court order, noting that she is out of time, she has moved the court with the instant application.

The application has been valiantly opposed by the respondent, through a counter-affidavit sworn by her principal officer one Katengesya John. Through her counter affidavit, she has taken a serious exception to the application, contending that reasons for striking the labour revision were due to the applicant and her counsel's own negligence since they opted not to adhere with the requirement of the law. She took the view that the applicant's averments do not have weight and should not be relied upon.

At the hearing of application, the applicant fended for herself while the respondent has the services of Mr. Sabas Shayo, learned counsel. Hearing of the application took the form of written submissions, preferred in accordance with the schedule for filing drawn by the court.

The applicant began her submission by establishing the grounds in which the court may grant an application for extension of time citing the landmark decision of **Lyamuya Construction Company Limited Vs. Board of Trustees of Young's Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010 (unreported). She argued that the

main ground for her application is a technical delay which constitutes a sufficient cause for extension of time, she supported her contention by citing the decisions in **Fortunatus Masha Vs. Willium Shija & Another** (1977) TLR 154.

She further submitted that, once the incompetent application was struck out by this court, it took her 9 days to file this application. That, within those 9 days she was making payments arrangements with learned counsels in respect of the application, considering that she is unemployed. She also cited the case of **Murtaza Mohamed Raza Virani & Another Vs. Mehboob Hassanali Versi**. Civil appeal No. 448/01 of 2020, which considered the time spent in preparing and filing of an application as a good ground for extension of time.

The respondent's counsel rebuttal was swift but stout. He began by restating the principle that governs grant of applications for extension of time. He argued that an applicant has to show sufficient cause and not just being negligent. He fortified her contention by relying on the decision of **Dr. Ally Shabhay Vs. Tanga Bohora Jamaat** [1977] TLR 305 and rule 56(1) of the Rules.

The respondent's counsel further contended that the applicant failed to account for each day of delay between 20<sup>th</sup> and 29<sup>th</sup> of June, 2022,

which is a legal requirement, according to case of **Interchick Company Limited Vs. Mwaitenda Ahobokile**, civil application No. 218 of 2016. That, failure to that, this application cannot be granted again, she relied on the case of **Vodacom Foundation Vs. Commissioner General (TRA)** CIVIL Application No. 107/20 of 2017 (Unreported).

The applicant brief rejoinder was that the case of **Dr. Ally Shabhay** (supra) is distinguishable from the present application.

Having dispassionately reviewed the rival submissions, one pertinent question to be resolved is whether the application is meritorious enough to be granted.

It should be noted that, it is trite principle of the law that, the court may for any reasonable or sufficient cause advanced by the applicant grant leave for extension of period of limitation. See the cases of **Benedict Mumello vs. Bank of Tanzania** (2006) 1 EA 227 (CAT) and **Lyamuya Construction Company Ltd vs. Registered Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). In both cases, it was stressed that an application for extension of time is entirely in the discretion of the court and the same may be granted only where sufficient reasons for the delay has been established. In **Lyamuya Construction**

**Company Limited (supra)** the Court set key conditions for the grant of extension of time. These are:

- "(a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*
- (d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

Gathering from the supporting affidavit and the applicant submission, the applicant's efforts are towards filing her revision application after what she went through in her previous attempts which were within time. The question that arises is whether delay under the circumstances which she has explained, constitutes a sufficient reason to extend time. I have considered the respondents submissions, contrary to what he has stated, I find that the application was supported by the relevant legal provisions and the applicant was far from being negligent. Further, the delay is not inordinate because it is only by 9 days. Thus, my unflustered answer to the raised issue is in the affirmative. By and large, it is undisputed that, the delay is attributed to the pursuit of the revision process the matter which was struck out. It is a delay for which the

applicant is totally unblemished, though the striking out was as a result of the flaws committed by the applicant.

My holding is predicated on the settled position of the law that, delays which arise as a result of pursuing matters that are subsequently adjudged defective or through a wrong procedure, are excusable. They are the delays which are known, as technical and are acceptable to constitute a sufficient cause for extension of time. See the cases of **Amani Girls Home v. Isack Charles Kanela**, CAT-Civil Application No. 325/08 of 2019 (Mwanza – unreported) and **Victor Rweyemamu Binamungu v. Geoffrey Kabaka & Another**, CAT- Civil Application No. 602/08 of 2017 (Mwanza-unreported). In **Victor Rweyemamu Binamungu** (supra) for example, the Court held that:

*"Be it as it, (he) first applied for revision which was however struck out on 4<sup>th</sup> December 2017 on account of time limit. This period from the date of the decision intended to be revised to the date of striking out Civil Application for revision No. 26 of 2017, is what has acquired the name of technical delay which cannot be blamed on the applicant. There are many decisions on that position such as **Ally Ramadhani Kihyo v. The Commissioner for Customs and the Commissioner General Tanzania Revenue Authority**, Civil Application No. 29/01 of 2018 (unreported), **Kabdeco v. Watco Limited**, Civil Application No. 526/11 of 2017 (unreported), **Salim Lakhani***

***and 2 Others v. Ishfaqe Shabir Yusufali (As an Administrator of the Estate of the Late Shabir Yusufali), Civil Application No. 455 of 2019 (unreported)."***

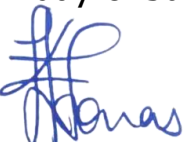
Thus said, it is my considered view that, the applicant's circumstances demonstrate a sufficient cause for this court to exercise its discretion in granting the application.

Consequently, I hold that the application for extension of time has merit and it hereby allowed. The applicant should file her application within twenty-one (21) days from the date of this ruling. This being the labour dispute there are no orders as to costs.

It is so ordered.

DATED at **MWANZA** this 21<sup>st</sup> day of July, 2023.



  
**L. J. ITEMBA**  
**JUDGE**