

**IN THE HIGH COURT OF TANZANIA  
MUSOMA DISTRICT REGISTRY  
AT MUSOMA**

**MISC. LABOUR APPLICATION NO. 16 OF 2022**

*(Arising from the Decision of the High Court of Tanzania at Musoma in Labour Revision No. 21 of 2019)*

**BETWEEN**

**RAPHAEL OLOGI ANDREA.....APPLICANT**

**VERSUS**

**MUSOMA URBAN WATER SUPPLY  
AND SANITATION AUTHORITY.....RESPONDENT**

**RULING**

22 June & 24 July, 2023

**M. L. KOMBA, J.:**

This is an application for extension of time within which to file a notice of appeal to the court of Appeal of Tanzania against the decision of this court in Labour Revision No. 21 of 2019 between the parties. The application was made by way of chamber summons made under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R. E. 2019]. The chamber summons is accompanied by an affidavit sworn by the counsel for the applicant. The respondent filed a counter affidavit to contest the application.

A brief fact led to the present application as depicted from affidavit is as follow, on 29/11/2019 this court (Hon. Kisanya, J.) delivered judgement

and decree in Labour Revision No. 21 of 2019 where he overturned decision of the Arbitrator in Labour Dispute No. CMA/MUS/162/2018. Aggrieved by the said decision and decree, applicant filed a notice of appeal and later on lodged an appeal at court of Appeal of Tanzania, Civil Appeal No. 468/2020 whereby on 08/06/2022 the appeal was struck out for it being incompetent due to lack of proper service. The applicant is now knocking the door of this court seeking extension of time as narrated.

When the date fixed for hearing was scheduled, parties agree the application to be disposed of by way of written submissions. Applicant presented the written submissions in support of the application whereas on behalf of the Respondent, Mr. Anesius Stewart, learned State Attorney filed reply in opposing the opposing application. Both parties adhered to the filling schedule as directed by this court.

When taking the floor, the applicant submitted that it is a cardinal rule of practice and indeed common knowledge that real delay is different from technical delay and court of appeal of Tanzania have pronounced itself time without number that technical delay can be condoned to meet the good end of justice. He refers this court to the case of **The Director General LAPF Pensions Fund vs. Pascal Ngalo**, Civil Application No.76/08 of

2018 where the Court of Appeal adopted the principle of technical delay.

Applicant was of the submission that in his application he has raised the issue of illegality in the intended appeal and refers the case of **Eqbal Ebrahim vs. Allexander K. Wahvungi** Civil Application No.235/17 of 2020, that when there is a point of illegality the time may be extended. He prays this court to adopt affidavit as filed by Advocate Asubuhi Yoyo and pray to utilize its discretion power to condone the application.

While opposing the application, State Attorney differ with applicants' submission that his affidavit together with his submission in support of it, have failed to mention such illegality which this court is supposed to be based for condonation of time. That being not enough he submitted that the applicant has failed to account for each and every day of delay from 14 day of June 2022 when his appeal was struck out to 3<sup>rd</sup> day of August 2022 when the applicant knocked the doors of this Court seeking for extension of time.

Respondent relied in a decision of the Court in **Omary Ibrahim vs. Ndege Commercial Services Ltd**, Civil Application No. 83/01 Of 2020 Dar Es Salaam (Unreported) about illegality. It was his submission that

applicant did not disclose point of illegality in his affidavit and therefore this court cannot rely on undisclosed illegalities to warrant extension of time. He lamented that applicant failed to account more than 47 days from when the appeal was struck out. The court of appeal insisted even a single day must be accounted as in **Airtel Tanzania Ltd vs. Misterlight Electrical Installation Co. Ltd and Another**, Civil Application No. 37/01 of 2020 At Dar Es Salaam. He prays this court to dismiss the application for lack of merits.

In rejoinder applicant pray this court to consider this application holistically and in border spectrum all relevant factors as he elaborated clearly in paragraph 7 and 8 of his affidavit. He refers this court to the case of **Mbogo vs. Shah** (1968) E. A. 93 where Court of Appeal for East Africa insisted all relevant factors must be taken into account in deciding how to exercise the discretion to extend time.

Having heard submissions of parties and went through the application record and affidavit the issue for determination is whether the applicant has assigned a sufficient reason for extension of time. I am mindful of the fact that I am not supposed to dig much on the same, but only to consider as to whether the same constitute good cause to this application or

otherwise.

It is the settled position that whenever a person seeking for extension of time, he/she has to assign a sufficient reason for the court to consider in order to grant the same. The factors constituting sufficient reason are not firmly explained or listed. They are determined basing on the circumstances of each case. However, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any, that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs. Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported).

In the application at hand, the applicant sought the extension of time within which to file a notice of appeal to the court of appeal of Tanzania. The application has been filed on 03/08/2022 whilst the impugned ruling was delivered on 14/06/2022. It is almost 47 days elapsed which the applicant has to account for. For application to succeed there must be either days of delay are accountable or there is point of law which need attention of the court. See **Eqbal Ebrahim vs. Allexander K. Wahvungi** (supra) and **Damas Assey and Another vs. Raymond Mgonda Paula**, Civil Application No. 32/17 of 2018, CAT at Dar es Salaam (unreported).

In the present application, applicant failed to account each day of delay, however, he submitted that in his affidavit supporting the application he pointed there is illegality in expunged judgement as;

*7. That the appeal to the court of appeal stands overwhelming chances to succeed and there is point of law worth for the consideration by the court of appeal as demonstrate in the proposed memorandum of appeal to the court of appeal attached with this affidavit.*

I had time to read memorandum of appeal and found;

*'3. The learned high court judge erred in law by his failure to consider the imports of exhibit P3 and the general principle of*



*contract law surrounding the same which was the basis of the CMA award.'*

In memorandum of appeal the applicant is complaining of the law of contract in the whole saga of employment between the applicant and the respondent.

It is a settled principle of law that, an extension of time can be granted on the sole ground of illegality. This principle was propounded as said in the famous case of the **Principal Secretary, Ministry of Defence and National Service v. Devran Valambia** [1992] TLR 185 and the same has been consistently followed in the subsequent decisions of the Court including **VIP Engineering and Marketing Limited Vs Citibank Tanzania Limited** Consolidated Civil references No. 6, 7 and 8 Of 2006 (Un reported), **Attorney General Vs Consolidated Holdings Corporation and another**, Civil Application No. 26 of 2014 and **Lyamuya Construction Company Limited v. the Board of Trustees of Young Women's Christian Association of Tanzania (supra)**. In the latter case the principle was reinstated with clarifications on the scope of its application so that it would apply where the alleged illegality was apparent on the face of the record. In particular it was stated as follows:

*'..... Since every party intending to appeal seeks to challenge a 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 raises a point of law should as of right be granted extension of time if he applied for one. The Court there emphasized that such **point of law must be that 'of sufficient importance' and, I would add that it must be apparent on the face of the record, such as the question of jurisdiction;** not one that would be discovered by long drawn argument or process'.*

Considering the real circumstance of this case and the reality that there was already an appeal to the court of appeal that was struck out on technicalities and that in the memorandum of appeal pointed that in expunged judgment Hon Judge erred by his failure to consider exhibit P3 and general principle of contract law. It is for the want of the justice that I find the application be condoned.

Therefore, I invoke this court's discretionary powers conferred to it under section 11(1) of Cap 141 R. E. 2019 and in the interest of justice to allow



application. The applicant to lodge notice of appeal to the court of appeal of Tanzania within 14 days from the day of this ruling.

It is so ordered.

**DATED at MUSOMA** this 24<sup>th</sup> day of July, 2023.



  
**M. L. KOMBA**  
**Judge**

Ruling delivered in chamber in the presence of Mr. Stewart Kamugisha State Attorney representing the respondent and in the presence of applicant who appeared in person.

  
**M. L. KOMBA**  
**Judge**  
**24 July, 2023**