

**UNITED REPUBLIC OF TANZANIA**  
**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IRINGA REGISTRY**  
**AT IRINGA**

**MISC. LABOUR APPLICATION NO. 05 OF 2023**

*(Arising from Labour Revision No. 08 of 2019 in the High Court of Tanzania at Iringa)*

BETWEEN

**SOS CHILDREN'S VILLAGE TANZANIA.....APPLICANT**

AND

**ANASTAZIA LUKOMO.....RESPONDENT**

**RULING**

**Date of the Last Order:** 28.06.2023

**Date of the Ruling:** 04.08.2023

**A.E. Mwipopo, J.**

This is an application for an extension of time to lodge a Notice of Appeal to the Court of Appeal out of time. The application is through chamber summons supported by an affidavit of Moses Ambindwile, the applicant's advocate. The application is made under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019. The applicant is praying for the following orders:

- 1. That, this Honourable Court be pleased to grant an extension of time for the applicant to lodge a notice of appeal against the Ruling of this Court in Revision No. 08 of 2019.*
- 2. Any other order that this Honourable Court may deem fit and just to grant.*

The background of the matter is that; the applicant, SOS Children Village Tanzania, employed Anastazia Lukomo, the respondent herein, as a project coordinator for two years employment contract, which was renewed several times. On 05.04.2019, the respondent was demoted to the position of project officer and her salary was reduced following disciplinary proceedings, which found her guilty of disciplinary misconduct. The respondent was aggrieved and referred the dispute to the CMA at Iringa (CMA), registered as Labour Dispute No. CMA/IR/29/2019, complaining of difficulty in working conditions. In its decision, the CMA restored the respondent to her former position of project coordinator and salary. It also ordered the applicant to pay the respondent the salary arrears for May 2019.

The CMA decision aggrieved the respondent and successfully filed Revision No. 08 of 2019 in this Court. The High Court found that the CMA failed to record, analyze and adequately evaluate testimonies and evidence

adduced by both sides. It nullified the whole proceedings before the CMA and ordered the matter be heard afresh at CMA before another Arbitrator. The applicant was not satisfied with the decision of this Court and filed Civil Appeal No. 257 of 2021 in the Court of Appeal. The Court of Appeal, on 20.03.2023, struck out the appeal for incompetence. After the appeal was struck out, on 029.03.2023, the applicant filed the present application for an extension of time to lodge a notice of appeal to the Court of Appeal.

At the hearing, Mr. Moses Ambindwile, advocate, appeared for the applicant, whereas the respondent appeared in person, unrepresented. Mr. Ambindwile submitted in support of the application that on 25.03.2021, the applicant filed a notice of appeal against the decision of this Court in labour Revision No. 08 of 2019. The Court of Appeal called the appeal for hearing on 20.03.2023. The respondent raised a preliminary objection on the technical point that the appeal was incompetent as the applicant served her with the notice of appeal out of time. The Court of Appeal struck out the appeal for incompetence. On 27.03.2023, the applicant collected the order of the Court of Appeal, and on 29.03.2023, filed this application for an extension of time to file a notice of appeal to the Court of Appeal. He said the reason for the delay in filing a notice of appeal within time was a technical

delay as the Court of Appeal struck out the appeal on a ground of technicality. He cited the case of **Fortunatus Masha vs. William Shija and Another [1997] TLR 154**, where the Court of Appeal held that the distinction has to be made between real and technical delay. In the technical delay, the appeal lodged within time is struck out for technicalities.

The counsel said the applicant lodged the appeal to the Court of Appeal within time but was struck out for incompetence. Immediately after the appeal was struck out, the applicant filed this application for an extension of time without delay. According to him, this is sufficient ground for an extension of time. In the case of **African Banking Corporation Tanzania Ltd vs. George Williamson Ltd**, Civil Application No. 349/01 of 2018, Court of Appeal of Tanzania at Dar Es Salaam, (unreported), on page 11, the Court held that the other factor for consideration in the application for extension of time is the degree of prejudice to the respondent if the application for extension of time is granted. In this case, the applicant did not show how she would be prejudiced.

The respondent replied that the appeal before the Court of Appeal was not struck out on technical grounds only. She raised two points of a preliminary hearing (P.O.), and the applicant conceded to the 1<sup>st</sup> point of

P.O. As a result, the Court of Appeal did not consider 2<sup>nd</sup> point of preliminary objection about the failure of the applicant to serve her exhibits tendered during the trial at the CMA. The same will cripple her if this Court allows this application and the appeal to the Court of Appeal. Allowing the applicant to file a notice of appeal to the Court of Appeal benefits the applicant from his mistakes which made the first appeal incompetent. The applicant is rectifying an error by using the back door. The application has no basis as the applicant did not mention his grounds of intended appeal. As she has already filed a fresh labour dispute in the CMA as per the order of the High Court, granting the application will delay the determination of the labour dispute she has filed in the CMA. Both of them have a chance to be heard afresh at the CMA.

The respondent added that the applicant failed to account for each day of the delay, as stated in the case of **Kikundi Cha Kukopeshana vs. Mathias Kiliga**, Misc. Civil Application No. 47 of 2021, High Court Mwanza Registry, (unreported), on pages 12 to 13. The applicant must account for each day of the delay.

In his rejoinder, the counsel for the applicant retaliated his submission in chief. Concerning the issue of accounting for each day for the delay, the

counsel said they have accounted for all days from 25.03.2021, as shown in the 2<sup>nd</sup> paragraph of the affidavit. The respondent alleged that she got the order from the Court of Appeal on 21.03.2023, but there is no proof that she received the order on 21.03.2023, as she alleges. The applicant received the order on 27.03.23 and immediately filed this application. On the degree of prejudice, he said the CMA record is before this Court, which means the CMA could not proceed with the case.

Having read the submissions by the parties and having carefully gone through the court records, the issue to be determined by this Court is whether the applicant has demonstrated sufficient and reasonable cause to warrant an extension of time.

It is trite law that the High Court has the discretion to grant an application for an extension of time to file a notice of appeal to the Court of Appeal. The same is provided under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019. In the case of **Martha Iswalwile Vicent Kahabi vs. Marietha Salehe and three others**, Civil Application No.5 of 2012, Court of Appeal of Tanzania at Mwanza, (unreported), when discussing an application for extension of time, held that:-

*"It is a common ground that an application of this nature is at the discretion of the Court. In exercising the discretion, the Court must be satisfied that there are good grounds to decide in favour of an application."*

In the instant application, the reason for the delay put forward by the applicant is a technical delay. He said the appeal was filed before the Court of Appeal within time, but the same was struck out for incompetence as the Notice of Appeal was served to the respondent out of time. The applicant has stated in the affidavit that copies of the order of the Court of Appeal were supplied to him on 27.03.2023. He prepared the present application and 29.03.2023 filed it in Court. Thus, he used two days to prepare the present application and file it in Court.

Technical delay is a good reason for the extension of time, as it was stated in the case of **Bharya Engineering and Contracting Co. Ltd vs. Hamoud Ahmad @ Nassor**, Civil Application No. 342/01 of 2017, Court of Appeal of Tanzania at Tabora, (Unreported). In the case of **Fortunatus Masha vs. William Shija and another [1997] TLR. 154**, the Court of Appeal, while explaining the technical delay, held that:-

*"A distinction has to be drawn between cases involving real or actual delays and those such as the present one, which clearly only involved a technical delay in the sense that the original appeal was lodged in time but was 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 these circumstances, an extension of time ought to be granted."*

From the above-cited case, the principle of technical delay guides where a party promptly files a matter in Court, but the Court strikes it out for incompetence. The ground is sufficient reason for extending the time to file a competent case for the orders or remedies sought in the struck-out matter, provided that the party promptly moves the Court after the striking-out order was made.

In the case at hand, the applicant filed his appeal to the Court of Appeal within time, but the same was struck out for incompetence on 20.03.2023. On 27.03.2023, the applicant said he was supplied with a copy of the order of the Court of Appeal and on 29.03.2023, he filed the present application. I find the application was promptly made as he used just two days after being supplied with the order of the Court of Appeal to prepare



and file the present application. The applicant has accounted for each day of the delay by showing that he filed the 1<sup>st</sup> appeal to the Court of Appeal within time. After it was struck out, immediately he filed the present application for extension of time.

The respondent was of the view that allowing the application defeated the preliminary objection she raised at the Court of Appeal, leading to the appeal being struck out. The record show that the Court of Appeal found the 1<sup>st</sup> P.O. raised by the respondent was sufficient to dispose of the appeal lodged by the applicant. Nothing remains in the Court of Appeal registry when the matter is struck out. It means there is no such appeal in the Court of Appeal. Suppose the aggrieved party still want to pursue the appeal, he has to follow the procedures of appealing to the Court of Appeal afresh, including filing a notice of appeal and other necessary documents. The applicant is still aggrieved and has decided to start afresh the appeal process. For this reason, the applicant is applying for the leave of this Court to file a notice of appeal out of time as the time for filing a notice of appeal has already expired.

I'm satisfied that the applicant has sufficient reason for the delay as his 1<sup>st</sup> appeal filed within time in the Court of Appeal was struck out for incompetence. It is a technical delay. Soon after receiving the order of the Court of Appeal striking out the appeal, the applicant promptly filed the present application.

Therefore, the application has merits, and I allow it. The applicant has to file a notice of appeal to the Court of Appeal within 30 days from the date of this order. As this is a labour matter, each party shall bear own cost. It is so ordered accordingly.



A handwritten signature in blue ink, appearing to read "A.E. MWIPOPO", is written over the seal and extends to the right.

**A.E. MWIPOPO**

**JUDGE**

**04/08/2023**