

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

MISC. LABOUR APPLICATION NO. 6 OF 2023

(Arising from Labour Revision No. 16/2018 of the High Court of Tanzania before Hon. P.M. Kente, J. Original Labour Dispute No. CMA/IR/14/2016 of the Commission for Mediation and Arbitration of Iringa at Iringa before Hon. Y. Luwumba, Arbitrator)

BRIGHTON KAZOBA 1ST APPLICANT

JULIUS CHARLES 2ND APPLICANT

VERSUS

TANZANIA NATIONAL ROADS AGENCY..... RESPONDENT

RULING

20th July & 10th October, 2023

I.C MUGETA, J:

The applicants seek extension of time to file notice of appeal to the Court of Appeal out of time. The application is made under section 11(1) of the Appellate Jurisdiction Act [Cap. 141 R.E 2019] (the AJA) and Rule 10 of the Court of Appeal Rules, 2009.

The applicants were employees of the respondent. They were terminated on 17th January, 2016 due to gross misconduct. They referred their labour dispute to the CMA that held that they were unfairly terminated. It awarded Tshs. 24,596,000/= to each applicant being 22 months' salary. The respondent was aggrieved by the award and filed a revision application to this court which quashed and set aside the CMA proceedings and the award. The decision of this court did do well with the applicants who appealed to the Court of Appeal.

Unfortunately, their appeal was struck out for failure to comply with the provisions of Rule 84(1) and 90(3) of the Court of Appeal Rules. They are still intending to appeal the Court of Appeal, hence, the present application.

According to the affidavit deposed by Musa Mhagama, the applicants' learned advocate, the application is grounded on technical delay as the applicants have been prosecuting civil appeal No. 258 of 2021 at the Court of Appeal which was struck out on 21st March, 2023.

The respondent resisted the application alleging negligence in prosecuting their case. It has been argued for the respondent that the applicants have failed to account for each day of delay as the appeal was struck on 21st March, 2023 and the present application was filed on 28th April, 2023 after a lapse of 38 days.

The application was disposed of by way of filing written submissions. The applicants are represented by Musa Mhagama, learned advocate while the respondent is represented by Bryson Ngulo, learned State Attorney.

Learned counsel argued in line with the contents of the affidavit and counter affidavit. Counsel for the applicants added that the orders sought are discretion as provided under section 11(1) of the AJA and

the holding in the case of **Mumello v. Bank of Tanzania** [2006] E.A 227.

The learned State Attorney responded that the applicants did not act promptly and diligently in filing the present application which must be demonstrated to win the discretion of the court. To support his argument, he cited the case of **Salvad K.A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006, Court of Appeal – Dar es Salaam (unreported). In his view, the applicants have failed to account for each day of the delay from 21st March, 2023 to 28th April, 2023 when the present application was filed.

In his rejoinder, the applicants' counsel argued that from 21st March, 2023 to 28th April, 2023, the applicants spent time obtaining a copy of the Court of Appeal Order, engaging an advocate and preparation of the present application.


Having considered the affidavit, counter affidavit and the parties' submissions, the point of departure between the parties is on accounting for the delay for the period from 21st March, 2023 to 28th April, 2023. Indeed, that period is unaccounted for. Counsel for the applicant has submitted in rejoinder that the said period was spent to on obtaining a copy of the Court of Appeal Order, to engage an advocate and to prepare this application.

Generally speaking, the above account sounds good. However, it is a statement by an advocate from the bar. The affidavit supporting the application is silent on how the disputed period was spent. As a statement from the bar is not evidence, the said period remains unaccounted for. It is now settled that in applications of this nature each day must be accounted for. It is not enough to show that the delay is technical.

Therefore, while I appreciate that the applicants delay is technical one, it is my further view that for failure to account for each day of the delay, the applicants have not advanced sufficient grounds for this court to grant extension of time to file their notice of appeal out of time. I, consequently, dismiss the application without costs.

It is so ordered.




I.C. MUGETA
JUDGE
10/10/2023

Court: Ruling delivered in the presence of 2nd applicant and Ms. Neema Sarakikya, learned State Attorney for the respondent.

Sgd. M. A. MALEWO

DEPUTY REGISTRAR

10/10/2023