

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. APPLICATION NO. 9 OF 2023

(Arising from Labour Dispute No. CMA/DOM/81/2021)

FINCA MICROFINANCE BANK LTD.....APPLICANT

VERSUS

JALALA HUSSEINRESPONDENT

RULING

Date of last order: 23/10/2023

Date of Ruling: 6/12/2023

KHALFAN, J.

The applicant filed an application in this court by way of chamber summons, under rule 24(1), (2)(3) 56(1) of the Labour Court Rules, GN 106/2007 (hereinafter referred to as the rules), seeking for the following reliefs:

- i) That, this honourable court may be pleased to grant an application for extension of time within which the applicant can file an application for revision.*
- ii) That, the Honourable court be pleased to grant any other orders and reliefs that it considers just and convenient to grant.*



The application is being supported by an affidavit sworn by Beatus Malawa principal officer of the applicant. On the other hand, the respondent filed a counter affidavit to contest the application.

By the parties' consensus, the application was disposed of by way of written submissions. The applicant was represented by Ms. Yusta Kibuga learned advocate.

In her submission in support of the application, Ms. Kibuga contended that this court has discretion to grant an extension of time in terms of rule 56(1) of the rules upon showing sufficient reasons or cause. She argued that the said provision does not define what constitutes sufficient reasons or cause learned advocate for the applicant. She argued that in the case of **Yusuf Same & another v. Hadija Yusuf** Civil No. 1 of 2002, the Court of Appeal of Tanzania (unreported) observed that:

"It should be observed that the term sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons which are outside the applicant's power to control or influence resulting in delay in taking necessary step."

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She also referred to the decision of **Fortunatus Masha v William Shija & another** [1997] and **Mohamed Iqbal v. Esrom M. Maryogo**, Misc. Civil Application No. 542 of 2021 (unreported). She submitted that after delivery of the decision of the Commission for Mediation and Arbitration (CMA), the applicant lodged an application for revision timely, but it was struck out on 30/9/2022. Later on, the applicant lodged another application for extension of time but the same was struck out for being incompetent, hence the present application.

The learned advocate for the applicant contended that failure to lodge the application on time was caused by technical delay which is quite different from other delays and she therefore urged the court to find that the applicant was diligent in pursuing the matter.


In reply, the respondent submitted that the applicant had failed to advance sufficient cause. Referring to the case of **Lyamuya Construction Company Ltd v. Board of registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 Court of Appeal of Tanzania at Arusha (unreported), the respondent argued that there are factors to be taken into account in determining whether sufficient cause for the delay has been advanced. He argued that, the applicant must

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account for all period of delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and if the court feels that there are other sufficient reasons, such as the existence of point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

The respondent argued that the applicant had not accounted for the all the period of delay since she had not stated how many days lapsed from the last date of filing the application for revision until the date of filing the instant application for extension of time. The respondent also argued that the applicant had not stated if the delay was not inordinate. The respondent argued that the applicant failed to show if she was diligent and not apathetic or negligent in prosecuting the action she intended to take.

The respondent submitted that the applicant has raised the issue of technical delay but she has not accounted for the days which she was not in court corridors. The respondent argued further that the fact that the applicant's application was struck out is a clear indication that she was very negligent which was also the same case when the subsequent application was also struck out. The respondent argued that there were prolonged



discussions that took place after each application was struck out which is also a sign of negligence and sloppiness on the applicant. The respondent argued that the applicant did not even attach the minutes of the meetings held.

As to the allegation of illegality, the respondent argued that the applicant's allegation that the arbitrator turned himself as the respondent's advocate, lacks basis and it cannot be termed as illegality. To buttress his arguments, the respondent referred to the case of **Ngao Godwin Losero v. Julius Mwarabu** Civil Application No. 10 of 2015 Court of Appeal of Tanzania (unreported). The respondent therefore urged the court to dismiss the application for lack of merits.

In rejoinder, the applicant essentially reiterated her submissions in chief.

Having gone through the parties' rival submission, the sole issue for my determination is whether the application has merits.

Rightly as argued by the learned advocate for the applicant, this court has discretion to grant an extension of time in terms of rule 56 (1) of the rules, upon the applicant showing sufficient cause. Correctly as argued by

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the learned advocate, in view of the decision she referred to, there is no universal definition of what constitutes good cause. In the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated that:

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."

It follows therefore that what constitutes good cause depends on the circumstance of each case. However, based on the decided cases, certain factors give guidance on whether or not the applicant has shown good cause. Amongst the factors to be taken into account were succinctly stated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, (supra) as follows:

"(a) The applicant must account for all the period for delay;

(b) The delay should not be Inordinate;

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(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and

(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 the illegality of the decision sought to be challenged."

I have carefully gone through the affidavit in support of the application, it is not in dispute that after delivery of the decision (award) of the CMA, the applicant lodged an application for revision in this court which was registered as labour revision no. 8 of 2022 but the same was struck out on 30/9/2022 for being incompetent. After the said application was struck out, the applicant had on 13/10/2022 lodged Misc. Labour Application No. 16 of 2022 seeking an extension of time to file revision but the same was struck out on 14/7/2023. Finally, the applicant lodged the instant application on 9/8/2023.

It is without doubt that Labour Revision No. 8 of 2022, which was struck out on 30/9/2022 was filed in time. Equally important to note, on 13/10/2022, hardly 12 days after the application for revision was struck out, the applicant lodged another application which was also struck out on 14/7/2023. Hence, this application was lodged about 25 days later.

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I have taken into account the reason by the learned advocate for the applicant that there was a technical delay. In the case of **Denis T. Mkasa v. Farida Hamza & another** Civil Application No. 407 of 2020 Court of Appeal of Tanzania at Mtwara (unreported) the Court of Appeal held that:

"The law is settled that, technical delay constitutes sufficient cause for extension of time, if it is pleaded in the supporting affidavit and sufficiently demonstrated by the applicant."

In the case of **Bank M (Tanzania) Limited v. Enock Mwakyusa**, Civil Application No. 520/18 of 2017 (unreported), the Court of Appeal held that a prosecution of an incompetent appeal when made in good faith and without negligence, *ipso facto* constitutes sufficient cause for extension of time. The similar stance was underscored in the case of **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (unreported).

In the instant matter, indeed, there was a technical delay caused by prosecution of Labour Revision No. 8 of 2022 which was later struck out and followed by the subsequent application which was also struck out.

Looking at the time that elapsed between one matter and another, I am of the considered view that the time lapsed was not inordinate. For



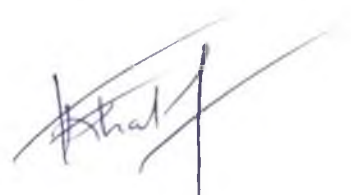
instance, it took the applicant 12 days to file an application for extension of time after Labour Revision No. 8 of 2022 was struck out, while the instant application was lodged after expiry of 25 days after the application for extension of time was struck out.

In the case of **Samwell Mussa Ng'omango (as a legal representative of the Estate of the late Masumbuko Mussa) v. A.I.C. (T) Ufundi**, Civil Appeal No. 26 of 2015 (unreported), the Court of Appeal having considered the circumstances of the case observed that:

"In my firm view the applicant acted promptly and diligently having filed the present application in less than 20 days since he obtained the certificate." [Emphasis added]

In another case of **Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) v. Mtumwa Moshi (as the Administrator of the Estate of the late Moshi Abdallah)**, Civil Application No. 407/17 of 2019 (unreported), the Court of Appeal considered a period less than 30 days to be reasonable time:

"After the latter application was struck out; the applicant took hardly a month to file the present application seeking for extension of time to file an appeal. In other

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words, the applicant was diligent all along to file an appeal. [Emphasis added].

Basing on the above, I am of the settled view that there was a technical delay caused by prosecution of the two incompetent applications and the applicant acted diligently in prosecuting them.

I have taken into consideration the respondent's arguments that the fact that the applicant's two applications were struck out, shows high degree of negligence. With respect, there is no proof that the applicant deliberately filed incompetent applications in this court.

It is for that reason I find the application to have merits. The applicant is granted 30 days from the date of this ruling within which to file the application for revision. In the circumstance, I will not make an order as to costs.

It is so ordered.

Dated at Dodoma this 6th day of December 2023




F. R. KHALFAN,

JUDGE

6/12/2023