

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

MOROGORO DISTRICT REGISTRY

AT MOROGORO

MISC. LABOUR APPLICATION NO 17 OF 2023

(Arising from Labour Review No. 1 of 2023, HC MOROGORO

*Originating from the Award of the Commission for Mediation and Arbitration at Morogoro in Labour Dispute No
CMA/MORO/05/2020 dated 26/07/2021)*

DIDACE MAGESA TANGATYA..... APPLICANT

VERSUS

YEPI MERKEZI ISTAAT VE SANAYI ANONIM

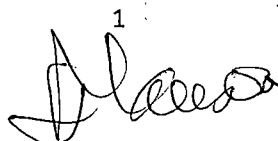
SIRKETI.....RESPONDENT

RULING

23/01/2024

MANSOOR J

The applicant, DIDACE MAGESA TANGATYA, applied for extension of time to be able to apply for Review of the decision of the High Court in Misc. Labour Application no. 5 of 2022. The reasons for delay are contained in the notice as well as in the affidavit of the applicant filed in support of the Chamber Application.

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The application was opposed by the respondent who filed the counter affidavit and the notice of opposition. The application was determined by written submissions

In his submissions, the applicant attacks the notice of opposition of the respondent as well as the affidavit of the respondent. He says the respondent did not cite any provisions of the law in the Notice of opposition, thus incompetent, and also says the affidavit is incompetent as the respondent was required to file counter affidavit and not the affidavit. He argues further that the counter affidavit contained only 22 paragraphs whereas he was required to respond to all 33 paragraphs of the affidavit of the applicant, he says this is contrary to Act No. 26(9) of the Laws, G.N. No. 106 of 2007.

The applicant also attacked the competence of the counter affidavit stating that the verification clause was defective, as the deponent Humphrey Aloyce Chuwa and Evern Damar did not disclose the source of the information they deposed in their affidavits, and this is contrary to Order XIX Rule 3 (1) of the CPC.

The Applicant referred the court to the case of Yohana

Nasambuda Ndaki vs Caspian Limited, Labour Revision

No 202 of 2015, High Court Shinyanga.

The applicant argues further that there was the evidence of the Doctor who proved that indeed the applicant was sick, and that was the sole reasons for delaying filing the Application for Review.

The applicant challenges Exhibit C, which carries the name Yapi Merkezi saying that the respondent denied at the CMA the existence of Yapi Merkezi, and he should not be allowed to refer to any exhibit carrying that name. In fact, I did not understand at all as to which Exhibit C, he was referring to, as I went through the Counter affidavit of the respondent and could not see any annexure C annexed to the affidavit.

The reasons for delay has been explained away in the last paragraph of his submissions, that he filed the Notice of Review within 15 days as required under section 27(1) of GN No. 106 of 2007, but he agrees to have delayed filing the Memorandum of Review within the time prescribed under section 27 (7) of the same laws as he was sick. He said he has High Blood Pressure and he was restricted from travelling long distances. There are

medical chits and letters from the Medical Officers which confirms that he was sick, and this was the reasons for delaying filing the Memorandum of Review. He refers the Court to the case of **Eddie Hamza vs African Barrick Goldmine Limited**.

The applicant did not give the citation of this case, and he did not attach it to his submissions.

In responding to the submissions of the applicant, the respondent states that, the applicant attached the Cover of the Medical Card for proving that the applicant was sick and this is what prevented him from filing the application for Review on time. The respondent suspected that the Cover of the Medical Card was suspicious as the details of the medical reports cannot be filled on the cover. The respondent decided to verify whether the Cover was genuine. It wrote the letter to Dodoma Referral Hospital on 9th November, 2023 (Annexure YM1 to the counter affidavit). On 10th November, 2023, the Dodoma Referral Hospital responded, the hospital acknowledged that the applicant attends as a patient, but said that the applicant was never been attended at the hospital on 7/10/2022 and 14/2/2023, and that for the year 2023, the applicant was attended only on

09/02/2023. The hospital said the Cover of the Medical Card had some shortfalls as there was no signature of the person who had attended him. This therefore is not proof that the applicant was advised by the Medical Doctor not to travel long distances on 7th October 2022 and 14th February 2023. In fact, on 7th November 2022, the applicant features as present in court at Morogoro in Labour Review No. 1 of 2022, and this proves that the Applicant was not sick and he was not restricted to travel on medical grounds.

Again, the reasons for delay explained by the applicant during the hearing of Labour Review No 1 of 2022 before this Court, the applicant stated that the reasons for delay was that the Court delayed to supply him with the copies of Ruling and that he was here in Morogoro on 18/10/2022 and 13/02/2023 for making follow up of the copies of the Ruling from the Deputy Registrar of the High Court.

The respondent, argues that the reasons of sickness advanced by the applicant were an afterthought, having seen now that the first reasons of delaying to be furnished with the copies of the Ruling by the Court did not work in his favour.

The respondent argues that the applicant failed to account for each day of delay from the date of the impugned decision in which he wants to be reviewed, that even after the Ruling delivered by Hon Judge Ngwembe on 30/08/2023, the applicant did not take any step until two months later, i.e. on 14/10/2023 when he filed in Court the Labour Application No. 17 of 2023. The applicant failed to account for 64 days of delay from the date of the decision of Hon Judge Ngwembe in Labour Application No. 1 of 2022, till the day he decided to file this present application in court. The Counsel refers to the case of **Lyamuya Construction Company Limited vs Board of Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** at page 6 and 7.

Regarding the competency of the Notice of Opposition, the respondent argues, and I agree as I have seen the Notice of Opposition that the respondent has cited the enabling provisions of the law, and Notice of Opposition was in compliance of the requirements of the law.

I am also in agreement with the submissions of the respondent regarding the affidavit of the respondent. The respondent

complied with the provisions of Rule 26 (9) of GN No 106 of 2007 in that he has filed the counter affidavit within 15 days after receipt of the notice of the applicant. The respondent was served with the application on 03 November 2023, and he filed his counter affidavit on 16th November 2023, well within the time prescribed. The Applicant definitely skipped the procedures explained in Rule 26 (10) of GN No. 106 of 2007, as he was required to file the Reply to Counter affidavit, and/or a Preliminary Objection, the applicant cannot be permitted to raise objections on the competency of the affidavit in the written submissions or during the hearing. See the case of **Bruno Wenceslaus vs the Permanent Secretary, Ministry of Home Affairs, civil Appeal No. 82 of 2017**, at page 9, the Court of Appeal said:

"..... submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."

Regarding the objections raised by the respondents in previous applications, the respondent admits that indeed it is true that the respondent raised objections as the applicant kept filing in court incompetent applications, and that it is trite law that one should not benefit from his own mistakes. The applicant filed three incompetent applications before the CMA and Court, which was Application No. CMA/MORO/05/2020, Labour Revision No. 15 of 2021 before the High Court, Labour Application no. 5 /2022 and Labour Review No 1 of 2022, and it would have been inequitable to allow a party to an employment contract to file an endless litigation. The Counsel cited the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni, Civil Appeal No. 19 of 2016**, in which it was held that, *"it is in the interest of the State that there should be an end to litigations."* The Counsel also cited the case of **Director of Tilapia Hotel Limited vs Ashura Abdulkadir, Civil Appeal No. 09/2019**, in which the Court of Appeal stated that *"the court may grant extension of time for leave to file an Appeal upon the applicant showing sufficient reason. Three times errors of law and procedure whether deliberate or genuine, cannot in my view, constitute a sufficient reason as envisaged under...."*

The respondent submits that again, the applicant repeated the mistakes, instead of applying for extension of time to file an application for Review against the decision delivered by Honourable Judge Hassan in Labour Application No. 05 of 2022, he is applying for extension of time to file an application for review against Labour Application no. 1 of 2022, which was also an application for Review of the decision in Labour Application No. 5 of 2022 delivered by Hon Hassan.

The Counsel for the respondent prays for the dismissal of the application as there is no sufficient reasons advanced for the granting of the extension sought.

The application before me is for extension of time to file the proper notice of review as shown in the Notice of Application.

Also, in the chamber summons, the applicant applies for extension of time to file Review. The applicant did not say whether he wants to apply for extension of time for filing an application for Review against which decision, or whether he wants to file the notice for review against which decision. He simply wrote in the Notice of Application and I quote:

1. "That this Honourable Court be pleased to allow this application for extension of time before filing, the proper notice for review"

In the chamber summons he applied for extension of time to file proper memorandum of review, the chamber summons reads:

- i. "That this Honourable Court be pleased to allow this application for extension of time to file the proper memorandum of review."

It is not clear as to whether the applicant is applying for an extension of time to file the Notice as prayed in the Notice of Application or to file the Memorandum of Review as prayed in the Chamber summons. In both, the Notice and the Chamber summons he did not say, which impugned decision of the Court he is seeking to Review. In the citation of both the Notice and the Chamber summons, he cited Labour Review No. 1 of 2023. On record, there has never existed Labour Review no. 1 of 2023 between the parties herein, however, there was annexed to the affidavit of the applicant a decision delivered by the High Court, Hon Ngwembe J, in Labour Review No. 01 of 2022, which was an application for review of Misc. Labour Revision No. 05 of 2022.

The application for Review No. 1 of 2022 was struck out by Hon Judge Ngwembe on 30 August, 2023 for being incompetent. Thus, even if we ignore the error in the citation of Labour Review No. 1 of 2022, it would have been proper for the applicant to seek for extension of time to review the decision in Misc. Labour Revision No 5 of 2022, instead of seeking for extension of time to file an application to review the application which was incompetent for being filed out of time. It is important to state in precise words in the prayers contained in the chamber summons and in the Notice of Application as to which decision of the Court the applicant is seeking the relief for.

Assuming now that the applicant is seeking for extension of time to file an application for Review against the decision of Hon. Hassan in Labour Revision No. 5 of 2022, the issue that needs determination is whether there was sufficient ground for granting it. The reasons for delay as explained in his affidavit and the submissions is that he was sick, and he was prevented by sickness to file the application for Review on time. To prove that he was sick, he filed a letter from Dr Ibenzi Ernest and Dr Samwel Magesa from Dodoma Referral Hospital dated

14/08/2021. This letter is of 2021, but the applicant was able to attend the proceedings of Misc. Labour Revision No 5 of 2022 without fail, the proceedings which ended in August 2022. Again, he was able, and he filed Labour Review No 1 of 2022, he attended the proceedings until August 2023, when the proceedings of Labour Review No 1 of 2022 were concluded before Honourable Ngwembe J. This letter is obviously for the year 2021, as in 2022, the applicant was a fine man able to file cases in court, and to attend to them without fail. This letter cannot be taken as proof for delaying filing the present application, which he ought to have filed it, within 15 days from the date of the decision of Hon Hassan J in Misc. Labour Revision No. 5 of 2022.

Again, the Cover of the Medical Chit was doubted, and it was confirmed by the letter from Dodoma Referral Hospital dated 10th November, 2023 (annexure YM1) to the affidavit of the respondent, that yes, the applicant has been attending the clinic, and the dates of his attendance in the clinic were shown in the letter, the last date of attending the clinic was on 09th February 2023, but the cover of the medical card presented by the

applicant in court as evidence of his sickness had some shortfalls as it was not completed as required and they doubted the signature of the person who attended him. Despite the shortfalls, there is nowhere in the medical card that is written that the applicant is restricted from travelling from Dodoma to Morogoro due to High Blood Pressure, and as records of the Court would show, and as amplified in the submissions of the respondent's counsel, the applicant attended to his matters in court here in Morogoro in 2022 and 2023, thus proving that, he was never prevented by the High Blood Pressure from filing the application for Review for many months from the date the impugned decision was delivered. Thus, I find no sufficient reasons for granting the prayer for extension of time to file for Review of an unknown decision.

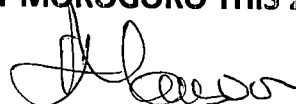
Again, it appears the medical chit presented by the applicant is not genuine as it was doubted by the issuer, I would say that producing the false/fake certificate is a grave misconduct and one could be prosecuted for the offence of forgery or misrepresentation. The question is one of a TRUST. How can an employee who has produced a fake and forged medical

certificate in court be trusted? His evidence becomes not credible and cannot be acted upon by the courts. Whether such a certificate was material or not and/or had any bearing in supporting his application or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. The Court cannot act on a forged or fake medical certificate to grant any relief to the applicant, and the credibility of the applicant is highly doubted.

Consequently, there is no merit in the present application and the same is hereby dismissed.

As this is Labor Dispute no costs are awarded.

DATED AND DELEIVERED AT MOROGORO THIS 23RD DAY OF JANUARY 2024



LATIFA MANSOOR

JUDGE

23RD JANUARY 2024

