

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOSHI SUB-REGISTRY

AT MOSHI

MISCELLANEOUS LABOUR APPLICATION NO. 08 OF 2023

(C/F Labour Revision No. 49 of 2017 in the High Court Tanzania at Moshi)

FRANK REUBEN KAZOKA..... APPLICANT

VERSUS

TPC LIMITED.....RESPONDENT

RULING

Date of Last Order: 13.02. 2024

Date of Ruling : 26.03.2024

MONGELLA, J.

The applicant herein has moved this court under **Section 11(1) of the Appellate Jurisdiction Act** [Cap 141 R.E 2019] seeking for enlargement of time to file his notice of appeal in the Court of Appeal. He wishes to appeal against the Ruling and Order of this court in Labour Revision No. 49 of 2017. His application was supported by his own sworn affidavit. Advocate David Shilatu, representing the respondent, filed a notice of opposition contesting the same.

The application was resolved in writing whereby the applicant was represented by Mr. Manase Mwanguru from TASIWU while the respondent was represented by Mr. David Shilatu, learned Advocate.

According to the applicant's affidavit, he filed a claim at the Commission for Mediation and Arbitration (CMA), vide Labour Dispute No. MOS/CMA/ARB/06/201. The same was determined on 29.06.2027. He was aggrieved by the said decision thus filed Labour Revision No. 49 of 2017 before this court. The decision on this revision was issued on 17.12.2019. He was again aggrieved by said decision and filed a notice to appeal in the Court of Appeal on 10.01.2020. He later filed his appeal in the Court of Appeal on 11.05.2020 (Civil Appeal No. 201 of 2020). When the matter came for hearing in Court of Appeal, it was found that the respondent was not served a copy of the letter to Registrar requesting copies contrary to **Rule 90(1) of the Court of Appeal Rules, 2009**. The appeal was thus struck out on 10.07.2023.

Strangely, submitting for the applicant, Mr. Mwanguru made his submissions pertaining an application for leave to appeal to the Court of Appeal. With due respect, his submission does not relate to the application at hand. To make matters worse, in his submissions, the applicant's affidavit was not adopted. Instead, Mr. Mwanguru raised and discussed several grounds as if this was an actual appeal. In short, the submissions did not depict any details in support of the affidavit.

This massive error however, went unnoticed by Mr. Shilatu. He only pointed out flaws in the applicant's submissions not connected to the actual flaws in it. He averred that Mr. Mwanguru was required to submit on points of law to be determined by the Court of Appeal



so that this court would grant him leave to appeal at the Court of Appeal. He then proceeded to make his submissions against the points of law raised by the applicant and finalized his submissions with a request for dismissal.

In his rejoinder, Mr. Mwanguru somehow seemed to have recognized the matter was for extension of time, but did not bother to either seek to rectify his error. He merely reiterated his arguments on there being points of law to be considered by the Court of Appeal. Shortly after he fell back into arguing the appeal, he finalized his submissions with prayer for the applicant to be granted extension of time to file his notice of appeal to the Court of Appeal.

In the foregoing observation, I firmly hold the view that there were no submissions filed before this court by the parties with respect to the application for extension of time. This is because one, the applicant's affidavit was never adopted by Mr. Mwanguru to form part of his submissions and thus cannot be relied on.

Two, the submissions made, did not in any way support the application before this court. Being an application for extension of time, the applicant ought to have advanced sufficient reasons for his delay to move this court to grant him his prayer. This is in consideration of the fact that, while granting extension of time is within discretion of the court, there are criteria that ought to be satisfied for the court to grant the same. These criteria were well provided in the case of **Lyamuya Construction Co. Ltd vs. Board of**



Registered of Young Women's Christian Association of Tanzania

(Civil Application 2 of 2010) [2011] TZCA 4 TANZLII whereby the Court stated:

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: -

- (a) The applicant must account for all the period of delay
- (b) The delay should not be inordinate
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- (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."

The applicant's failure to submit on the facts he deposed in his affidavit is equivalent to failure to file submissions before the court. The failure to file submissions amounts to non-appearance whereby consequences thereof are inevitable. This was well stated in **Godfrey Kimbe vs. Peter Ngonyani** (Civil Appeal 41 of 2014) [2017] TZCA 1 (21 July 2017) TANZLII whereby the Court of Appeal faced a similar situation. It held:

"We are taking this course because failure to lodge written submissions after being so



ordered by the Court, is tantamount to failure to prosecute or defend one's case."

In the foregoing reasoning, I hereby dismiss this application for want of prosecution. Being a labour matter, I make no orders as to costs.

Dated and delivered at Moshi on this 26th day of March 2024.


L. M. MONGELLA
JUDGE

