THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT–LABOUR DIVISION

(MUSOMA SUB REGISTRY AT MUSOMA)

Misc. LABOUR APPLICATION No. 18 OF 2023

(Arising from the Commission for Mediation and Arbitration for Mara at Musoma in Labour Dispute No. CMA/MUS/66/2022)

JIDAY DONALD ELIKIEZA ..... **APPLICANT**

Versus

NORTH MARA GOLD MINE LTD ..... **RESPONDENT**

RULING

03.04.2024 & 08.04.2024
Mtulya, J.:

On 30th June 2023, **the Commission for Mediation and Arbitration for Mara at Musoma** (the Commission) in **Labour Dispute No. CMA/MUS/66/2022** (the dispute) had rendered down an award in the dispute between **Mr. Jiday Donald Elikieza** (the applicant) and **North Mara Gold Mine** (the respondent) in favor of the applicant and ordered the respondent to pay the respondent Tanzanian Shillings 46,188,588,79/= within 42 days from 30th June 2023.

The award aggrieved the applicant and had some issues to complain in this court hence his learned counsel, **Mr. Ernest Mhagama** went back to the Commission on 3rd July 2023 and picked up necessary documents of the dispute in order to contest the award in this court. On 14th August 2023, Mr. Mhagama had

instructed his Legal Officer, **Ms. Zebida Issa** to approach this court and lodge a revision via on-line registration system. However, Ms. Zebida had filed the revision in the **High Court Labour Division** instead of **High Court-Musoma Sub Registry** hence the revision was not displayed in Musoma Sub Registry. In his affidavit filed in this court, Mr. Mhagama, briefly stated in the 14th to 16th paragraphs that:

> *That the said revision was filed by her [Ms. Zebida Issa] on 14th August 2023 through online...while making the follow up at the High Court Musoma Registry, I came to realize that the case was not filed in the High Court Musoma Registry. However, the same was mistakenly filed in the High Court Labour Revision...the delay was not caused by negligence.*

The materials produced in the instant application show that the applicant came to learn on the mistake of filing in the wrong registry after a lapse of six (6) weeks required by the law enacted in section 91 (1) (a) of the **Employment and Labour Relations Act [Cap. 366 R.E. 2019]** (the Labour Relations Act) to prefer revision in this court. Subsequent to the delay in filing a revision, Mr. Mhagama has approached this court on 5th September 2023 and lodged the instant application praying for enlargement of time to file revision out of time. Mr. Mhagama was summoned to appear

and explain the reasons of delay in this court on 3rd April 2024. In his explanations, Mr. Mhagama submitted that the revision was filed within time, but in a wrong registry which is also displayed in the filing system of the judiciary and he came to learn the same after a follow-up at this court. According to him, there is no any negligence on part of the applicant, applicant's learned counsel or legal officer in his office.

Finally, Mr. Mhagama introduced the issue of right to be heard and prejudice to the respondent. In his opinion, the applicant has applied for enlargement of time to cherish the right to be heard which is a human right issue and if the application is granted, the respondent will not be prejudiced or suffer any irreparable loss.

The submission of Mr. Mhagama was protested by the respondent's learned counsel, **Mr. Imani Mfuru**. According to Mr. Mfuru, the applicant's learned counsel had displayed negligence in the instant application. In order to substantiate his submission, Mr. Mfuru had produced four (4) reasons, namely: first, the applicant's learned counsel had filed the application in a wrong registry, which it has already been resolved by this court to be a negligence in the precedent of **Fidelis Mwombeki Ndaboine v. Faith Ndaboine**, Misc. Civil Application No. 37 of 2023. According to Mr. Mfuru, the Court of Appeal has already stated that negligence is not part of pigeon holes of good causes in praying enlargement time and

moved on to cite the precedent in **Henry Jalison Mwamlima & Others v. Robert Jalison Mwamlima & Others**, Civil Reference No. 1004/06 of 2023; second, issues of electronic filing systems and faults in sciences within the Judiciary of Tanzania are resolved under Rule 24 (5) of the **Judicature and Application of Laws (Electronic Filing) Rules of 2018** by reporting the matter to the Deputy Registrars; third, the applicant's learned counsel had filed the revision on a deadline of filing the revision, 14th August 2023; and finally, the applicant had declined to account on each day of the delay in twenty two (22) days as from the deadline, 4th August 2024 to the filing of the present application on 5th September 2023.

Regarding the submissions on the right to be heard and prejudice to the respondent, Mr. Mfuru stated that the applicant had six (6) weeks within which to exercise his right to be heard, but had opted to decline them and the respondent will be prejudiced by resources time and costs in defending the intended revision.

In a brief rejoinder, Mr. Mhagama insisted that it was sciences within the Judiciary filing system which display two distinct court of High Court Musoma and High Court Labour Division which had confused his legal officer, and if there is any wrong, it is his legal officer who should be blamed. According to him, he made follow ups which uncovered the fault hence he cannot be blamed as he

was prompt in following up the revision hence Rule 24 (5) of the Rules cannot be invited in such circumstances. In the opinion of Mr. Mhagama, the two precedents indicated by Mr. Mfuru cannot apply in the present application in two scenarios, that: first, the applicant had preferred the revision within time, but sciences have decline him to access this court; and second, each case is resolved in its peculiar circumstances. In finalizing his rejoinder, Mr. Mhagama submitted that the respondent will not be prejudiced for the applicant to enjoy the right to be heard as the respondent cannot compare the right to be heard and issues of resources time and costs.

I have heard the learned counsels of both parties and considered their submissions and reasons in favor of the application, namely: first, challenges of sciences in filing disputes in our courts; and second, diligence of the applicant's learned counsel in following up his revision in this court. The law regulating enlargement of time to lodge actions out of time requires applicants to produce good or sufficient reasons to move the court to decide in their favor (see: **Benedict Mumello v. Bank of Tanzania** [2006] E.A.I.R (I) 220; **Samwel Sichone v. Bulebe Hamis**, Civil Application No. 8 of 2015 and **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010).

However, the law is silent on what constitutes a good cause (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani,** Civil Application No. 27 of 1987). It is therefore upon a party who is seeking enlargement of time to provide **relevant materials** in order to move the court to exercise its discretion in his favor.

The present applicant has produced two (2) reasons of delay, namely science in filing the revision and diligence in prosecuting the revision, whereas the respondent protested the move and produced four (4) reasons. It is fortunate that both issues of the contests have received directive of this court and the Court of Appeal.

Regarding negligence, it is settled law that negligence or laxity or sloppiness on part of the applicant or his learned counsel, in prosecuting action that he intends to take, is not a good cause in an application for enlargement of time. There is a large bundle of precedents on the subject (see: **Transport Equipment Ltd V. D.P. Valambhia** [1993] TLR 91; **Henry Jalison Mwamlima & Others v. Robert Jalison Mwamlima & Others** (supra); **Tauka Theodory Ferdinand v. Eva Zakayo Mwita & Others**, Civil Reference No. 16 of 2017; and **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010).

In the instant application, the contest is whether the applicant or his learned counsel was negligent. According to Mr. Mhagama, the applicant or his learned counsel was not negligent as the application was filed within time, and followed up the revision to see whether it was properly moving in Musoma High Court Registry, but learned that sciences in filing system had declined the applicant.

In reply of the submission, Mr. Mfuru stated that the materials presented by Mr. Mhagama show that he was negligent as: he lodged the application in the wrong registry; electronic filing systems or faults or science within the Judiciary are reported to the Deputy Registrars for certification; he filed the revision on the final day of six (6) weeks of preferring revision in this court; and he did not account on each day of the delay in twenty-two (22) days.

I am aware Mr. Mhagama, at one point in time during the hearing proceedings of the instant application, had argued that, if at all there is any negligence, the alleged negligence was to be attributed to his subordinate in office, called legal officer, Ms. Zebida Issa. I wish to put this clear before I resolve an issue whether there is any negligence on part of the applicant in the registered materials. The law regulating negligence or diligence in enlarging time to lodge actions out of time shows that even subordinates, associates, legal officers, legal assistant or clerks in

learned counsels' chambers are part of the learned counsels' hands (see: **Inspector Sadiki & Others v. Gerald Nkya** [1997] TLR 290). The Court of Appeal in the indicated precedent had resolved that:

> *...the reason advanced for seeking the enlargement of time was* ***the error of a law clerk in the chambers of the learned advocate for the applicant****. We found that not to constitute sufficient reason. Just for purposes of completeness, in* ***Daphne Parry v. Murray Alexander Carson [1963] EA 546****, the applicant was late for only five days when he applied for extension of time, but the Court of Appeal for East Africa refused to do so, despite the fact that they thought that the appeal had merit.*
>
> (Emphasis supplied).

Having resolved the issue of learned counsels and their associates in chambers regarding negligence, I move forward to scrutinize materials brought in the application as directed in the precedent of the Court of Appeal in **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014. The record shows that the applicant's learned counsel had received necessary materials for revision purposes in the first week of the decision of the Commission and was silent until the last day of filing the revision, 14th August 2023. On this day, according to the record, the applicant's counsel had instructed his legal officer to lodge the revision and she lodged in a wrong registry. It is unfortunate that there is already decision of this court in **Fidelis Mwombeki**

Ndabaine v. Faith Ndabaine (supra), which had resolved at page 7 of the Ruling that:

> *In simpler terms, the applicant's learned counsel* ***act of filing the appeal in the wrong registry is the cause for delay*** *as he himself has deposed in the affidavit...this court finds* ***no good reason has been advanced*** *for extension of time.*
>
> (Emphasis supplied).

The reason of such thinking of this court is found in the Court of Appeal's precedent in **Exim Bank (T) Ltd v. Jacquilene A. Kweka**, Civil Application No. 348 of 2020. The Court then thought that:

> *...firms are manned by lawyers who ought to know court procedures. In fact, failure of the advocate to act within the detect of the law cannot constitute a good reason for enlargement of time.*

The Labour Relations Act provides for six (6) weeks for intended applicants to approach this court for revision and the applicant's learned counsel had the indicated six (6) weeks to enjoy the right to be heard in this court. However, he declined the weeks until the last day of enjoyment. In the instant application, the materials brought on record show that the applicant had learned on the filing in wrong registry and made follow ups in this court to know the reasons. However, the applicant's learned counsel is

silent in his affidavit, in the affidavit of Ms. Zebida Issa, and during the submission in this court, when he had realized the fault. It is then difficult to scrutinize his actions' promptness and good faith. The Court of Appeal in the decision of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008, stated that:

> *It is trite law that an applicant before the court must satisfy the court that since becoming aware of the fact that he is out of time,* ***act very expeditiously*** *and that the* ***application has been brought in good faith****.*
>
> (Emphasis supplied).

I understand Mr. Mfuru has complained on twenty-two (22) days of the delay in bringing the present application and had moved further to ask the applicant to account on every day of the delay. I am aware there are multiple decision on the subject issued by this court and Court of Appeal (see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007; **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; **Florentina Philbert v. Verdiana Protace Mujwahuzi**, Misc. Land Application No. 75 of 2020 and **Fidelis Mwombeki Ndabaine v. Faith Ndabaine** (supra). As indicated on the record, Mr. Mhagama had declined to reply this complaint of Mr. Mfuru which may be interpreted to admit the facts or impliedly ignored the directives of

the Court of Appeal and this court on the subject. The Court of Appeal had reason in requiring applicants to account on every day of the delay. In its opinion: *there would be no point of having rules prescribing periods within which certain steps have to be taken* (see: **Sebastian Ndaula v. Grace Rwamafa** (supra).

I am aware after introduction of sciences in the Judiciary of Tanzania, several faults have been occurring in this court and subordinate courts. However, the same must be immediately reported to Deputy Registrars of this court located in all High Court Centers in this State or Resident Magistrates' In-Charge in their area of jurisdiction.

This is very important for appropriate measures and certification of the faults. The practice is also imperative for want of the application of the Rules and displaying vigilance on part of applicants or their learned counsels (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017 and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019).

Similarly, inadvertent of clerks or legal officers in advocates' chambers, in certain circumstances may be invited and resolve issues of enlargement of time to prefer actions in this court.

Nevertheless, it must be shown that an advocate is prompt, diligent in conducting his affairs and took necessary steps (see: **Michael Lessani Kweka v. John Eliafye** [1997] TLR 152). In the present application Mr. Mhagama directed his legal officer on the last day of filing the revision and took further twenty-two (22) days to lodge the present application without any further relevant materials to substantiate the indicted days. This is unfortunate on his part. According to the Court of Appeal in the precedent of **Transport Equipment Ltd v. D.P. Valambhia** [1993] TLR 91, at page 101 of the decision:

> *What is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time.*

I am conversant that each case is decided upon its peculiar facts, as rightly submitted by Mr. Mhagama. There is even Court of Appeal decision on the subject (see: **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019). This court has been cherishing the move without any reservations (see: **Richard Mbwana v. Joseph Mang'enya**, Misc. Land Case Application No. 2 of 2021, **Republic v. Ramadhani Mohamed Chambali**, Criminal Sessions Case No. 11 of 2020). However, in the instant application, I have already stated that the applicant's learned counsel had committed two (2) faults on negligence and

accountability of days of the delay. Similarly, I stated on the safe exercise of the right to be heard. The right must be exercised within the period of appeal to avoid discretionary mandate of this court. In the instant application, if the applicant is granted enlargement of time, it will cause unnecessary time schedules and costs to the respondent and this court.

In the end and having said so, the applicant's counsel own sloppiness, failure to account on twenty-two (22) days of delay and negligence caused by his legal officer cannot benefit him. In my considered view, the applicant has failed to adduce good reasons for the delay to persuade this court to decide in his favour. I am therefore moved to dismiss the application without costs, as this is a labour dispute.

Accordingly ordered.

F. H. Mtulya

Judge

08.04.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the respondent's learned counsel, **Mr. Castory Peja**, and in the absence of the applicant, **Jiday Elikieza**.

F. H. Mtulya

Judge

08.04.2023