

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LABOUR APPLICATION NO. 13 OF 2022

(Arising from Misc. Application No. 25 of 2018 and Labour Revision No. 62 of 2016, Origin Labour Dispute No. CMA/SHY/104/2015)

MARIAM ENOCK CHACHA.....APPLICANT

VERSUS

ACACIA BULYANHULU GOLD MINE.....RESPONDENT

RULING

7th September, 2023 & 30th January, 2024.

S.M. KULITA, J.

This is an application for extension of time. It has been filed by the Applicant by way of chamber summons in terms of the provisions of section 11(1) of the Appellate Jurisdiction Act [Cap 141 RE 2019]. In the chamber summons, the Applicant prays for this court to grant extension of time for her to lodge a Notice of Appeal to the Court of Appeal for the decision of the Misc. Application No. 25 of 2018, that he intends to appeal before that said court. The application is supported with an affidavit sworn by Applicant herein on the 19th day of August, 2022.

In a nut shell, the Applicant herein was the applicant in the Misc. Labour Application No. 25 of 2018. The same was dismissed for two reasons; firstly, for being time barred, and secondly, for being moved under a wrong provision of the law.

Soon after the dismissal, the applicant filed a Notice of Appeal at the Court of Appeal and thereby filed her appeal on 12th August, 2020. The said appeal at the Court of Appeal was registered as Civil Appeal No. 506 of 2020. The same was struck out on 26th August, 2021 for being filed out of time. As the applicant is out of time, she now seeks for extension of time to start afresh by lodging the Notice of Appeal.

On 22nd May, 2023, the matter was scheduled for hearing through written submissions. Both parties complied with. In this Application, Mr. Mahuma, learned Advocate represented the Applicant, whereas Mr. Iman Mfuru, Advocate represented Respondent.

Mr. Mahuma moved the applicant's application for extension of time relying on two reasons. One, that there is illegality on the impugned decision. Expounding on this, he said that, the trial Judge, after learning that the applicant's application No. 25 of 2018 was moved under the wrong provision of the law, he ought to have struck it out instead of dismissing the same.

On the second reason Mr. Mahuma raised the issue of technical delay as ground for extension of time. In it, Mr. Mahuma was of the views that, during all the delay, the applicant was on court premises pursuing matters in court. Giving explanation to it, Mr. Mahuma stated that, as a lay person, before her civil appeal was struck out by the Court of Appeal, she did not have a knowledge to file a Certificate of Delay, thus she filed her appeal without it, hence, it was struck out. He went further stating that, after the applicant's appeal was struck out by the Court of Appeal, she also used much efforts in getting the Certificate of Delay from the High Court in vain. The reason being that there was no Notice of Appeal in the Court of Appeal.

In reply, Mr. Mfuru objected the reasons for extension of time by the applicant. On the issue of application No. 25 of 2018 being dismissed instead of being struck out, Mr. Mfuru stated that, as the same was found to be time barred, thus, the presiding Judge was right to dismiss it.

As for the issue of technical delay, Mr. Mfuru stated that, the same does not apply for the appeals which have been terminated for being lodged out of time. To bolster his assertion, he cited the case of **D.N. Bahram Logistics and Another vs. National Bank of Commerce and Another, Civil Reference No. 10 of 2017, CAT at DSM.**

In additional to that, Mr. Mfuru stressed that, it is a principle of law that, extension of time would be granted upon the applicant advancing sufficient reasons and successfully accounting for each day of delay. To him, the applicant has failed to meet that criteria. He thus prayed for the application to be dismissed.

Upon considerably gone through both parties' submissions, pleadings, annexures, supplied authorities and the entire records, I have noticed the issue for determination being, whether the Applicant has shown good and sufficient cause for the delay to warrant her extension of time.

In my analysis I hereby start with the point of illegality that has been raised by the Applicant as a ground for extension of time. The records provide that, the Misc. Civil Application No. 25 of 2018 lodged by applicant was dismissed on 15th April, 2020. The reason for the dismissal was that it was time barred. As it can be seen in the record, the presiding Judge rightly applied **section 3 of the Law of Limitation Act** which provides for dismissal of the application that has been filed out of time. Thus. there is no illegality in the decision of the High Court for the said Misc. Civil Application No. 25 of 2018. On that account, this alleged point of illegality as a reason for extension of time, fails.

As for the issue of technical delay, the same has been fully expressed in the case of **Fortunatus Masha Vs. William Shija and Another [1997] TLR 154**, where the Court observed at page 155 that;

" ... a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timorousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal."

With the above quotation, I find it easy to side with Mr. Mfuru, the reason being that, the issue of technical delay would only apply for the benefit of the applicant if and only if, the first applicant's appeal had been

filed in time. It should be known that, technical delay principle, seeks for the court while scrutinizing whether an application for extension of time should be granted or not, to exclude the period of time within which, the applicant had been prosecuting the already struck-out appeal.

For the appeal that has been struck out, it follows therefore that, even if the time that the applicant has been prosecuting her appeal which has been struck out is being excluded, yet, the applicant is left with the duty to account for the delay, from the date of the struck out of the appeal to the date of filing the application for extension of time at hand.

Taking into consideration of an aspect of promptness in filing the present application for extension of time itself, the record shows that, the applicant's appeal No. 506 of 2020 was struck out by the Court of Appeal on 26th August, 2021, but this application for extension of time was lodged on 21st August, 2022. This shows that, the applicant has delayed to file this application for extension of time for the period of one year. To the surprise, the applicant has never accounted for this delay, neither in her affidavit nor in her submission.

As ignorance of the law and the counsels' mistakes have never been good causes for extension of time as per the case of **Omary Ibrahim V. Ndege Commercial Services Ltd, Civil Application No. 83 of 2020,**

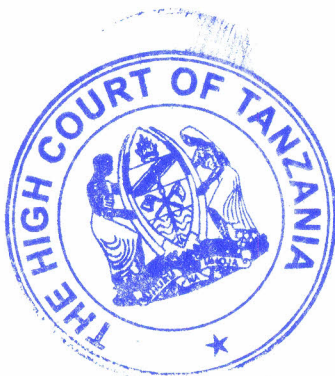
CAT at DSM, the application cannot be granted. Further, as the applicant did not account for days of delay from the time that her appeal was struck out by the Court of Appeal to the date of filing this application, as per the case of **Lyamuya Construction Company Limited v. The Registered Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2010, CAT at Arusha**, the applicant is regarded to have failed to advance good and sufficient reasons for extension of time.

On that account, I proceed to **dismiss** the applicant's application for being unmeritorious. No order as to costs.



**S.M. KULITA
JUDGE
30/01/2024**

DATED at SHINYANGA this 30 day of January, 2024.



**S.M. KULITA
JUDGE
30/01/2024**

