

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI SUB REGISTRY

AT MOSHI

MISC. LABOUR APPLICATION NO. 07 OF 2023

(Originating from Labour Revision No. 33 of 2015 of the High Court at Moshi, arising
from Labour Dispute No. CMA/Moshi/ARB/04/2007)

SAID KITUNDU SHOLE.....1ST APPLICANT
JOHN F. MACHA.....2ND APPLICANT
OSCAR F. MAKINDA.....3RD APPLICANT
ABDALLAH A. MZUMBE.....4TH APPLICANT
JOSEPHA J. PAULO.....5TH APPLICANT
SAFIEL E. MJEMA.....6TH APPLICANT
ATHUMAN H. SEMSI.....7TH APPLICANT
STEPHEN A. MATIAME..... 8TH APPLICANT
SELEMAN Y. KIMU.....9TH APPLICANT
DONATI MASSAWE.....10TH APPLICANT
YAHAYA SADIKI11TH APPLICANT
THERESIA F. ZOMANYA12TH APPLICANT
JUMA ALLY.....13TH APPLICANT
ALFRED MALITI14TH APPLICANT

EMMANUEL E. MUSHI.....	15 TH APPLICANT
LAWRENCE D. MSAKI.....	16 TH APPLICANT
KHATIBU S. KETO.....	17 TH APPLICANT
JOSEPH A. NDARU.....	18 TH APPLICANT
BRYSON S. NG'AMBI.....	19 TH APPLICANT
RAMADHANI SUKARI.....	20 th APPLICANT
ISRAEL NYARI.....	21 ST APPLICANT
ADOLPH TEMBA	22 ND APPLICANT
FRANK TILYA.....	23 RD APPLICANT
JEROME BASIL	24 TH APPLICANT
TIMOTH J. TIMOTHEO	25 TH APPLICANT
MASUMBUKO S. KABELEGE	26 TH APPLICANT
ELIANGILISA J. MMBANDO.....	27 TH APPLICANT
EMMANUEL GRIMOO	28 TH APPLICANT
PETER OSHRAEL	29 TH APPLICANT
EDES JOHN	30 TH APPLICANT
LUCIA BERNARD	31 ST APPLICANT
JOSIANA RAPHAEL	32 ND APPLICANT
JOHN N. NYEKELEA.....	33 RD APPLICANT
SAIDI M. SAIDI	34 TH APPLICANT
JULIUS MKUMBO	35 TH APPLICANT

SAMWEL L. JAMES.....	36 TH APPLICANT
CUTHBERTH MASURA	37 TH APPLICANT
COSTANTINO GEORGE	38 TH APPLICANT
ELIMKUNDA SWAI	39 TH APPLICANT
WLLIAM LYIMO.....	40 TH APPLICANT
PETER SHIMWELA	41 ST APPLICANT
JULIUS MAKARIOS	42 ND APPLICANT
GABRIEL FRANCIS.....	43 RD APPLICANT
ESTER W. MSENGI.....	44 TH APPLICANT
AUGUSTINO MAJO	45 TH APPLICANT
YAHAYA R. JUMA	46 TH APPLICANT
SIMON MOHAMED.....	47 TH APPLICANT
EXAVER MWAMAKA	48 TH APPLICANT
RENATUS M. KALINGA	49 TH APPLICANT
HUSSEIN S. MSAWA	50 TH APPLICANT
JOSEPH YONA	51 ST APPLICANT
MONICA D. KIPANDA	52 ND APPLICANT
JOHN SAMWEL	53 RD APPLICANT
AGNES A. MTUI	54 TH APPLICANT
VALENTINA H. MUSHI.....	55 TH APPLICANT
AMANA RAJABU.....	56 TH APPLICANT

KARIM MPONDA	57 TH APPLICANT
ADAM H. SALEHE	58 TH APPLICANT
HAMZA J. FATAKI.....	59 TH APPLICANT
FATUMA J. HAMISI.....	60 TH APPLICANT
EMILIAN ZABRON.....	61 ST APPLICANT
HOIDA T. MTEI.....	62 ND APPLICANT
AHMED I. ABDALLAH	63 RD APPLICANT
MALULU J. KIMONGE	64 TH APPLICANT
EMMANUEL M. TIWILI.....	65 TH APPLICANT
JOHN S. NGAMILA.....	66 TH APPLICANT
EUZEBIUS NGUYU.....	67 TH APPLICANT
SOPHIA N. KUBEJA.....	68 TH APPLICANT
ESTER NDUTA.....	69 TH APPLICANT
MARTHA N. NSALU.....	70 TH APPLICANT
GLORIA A. MOSES.....	71 ST APPLICANT
JAINA KARIKENE.....	72 ND APPLICANT
MICHAEL V. MGOVANO.....	73 RD APPLICANT
SAULO E. MJOGOLO	74 TH APPLICANT
YASIN L. LUKANGA	75 TH APPLICANT
REDEMPHTER J. SHIO.....	76 TH APPLICANT
WILSON NGIMBA.....	77 TH APPLICANT

SYPRIAN R. MAHAVILE	78 TH APPLICANT
MWASIT ABEID	79 TH APPLICANT
NEITIWE MGONJA	80 TH APPLICANT
LEONARD T. CHENGA	81 ST APPLICANT
STAIL L. MSANSHI	82 ND APPLICANT
ASSA K. MWAMPONDALI	83 RD APPLICANT
LAMECK GEREMIAH	84 TH APPLICANT
GRACE M. KAHAWA	85 TH APPLICANT
MARIA YASINTI	86 TH APPLICANT
SAID SALAHE	87 TH APPLICANT
RODGERS MASSAWE.....	88 TH APPLICANT
NJOROYOTA MWANGOKA	89 TH APPLICANT
JOHN PETRO	90 TH APPLICANT
BERNARD HAULE	91 ST APPLICANT
JUMA MSENGI	92 ND APPLICANT
COSMAS HASSANI	93 RD APPLICANT
JOHN V. LUOGA	94 TH APPLICANT
ANNA S. MWAIPAJA	95 TH APPLICANT
SILVIA G. WOISO	96 TH APPLICANT
ABUU KISUWA	97 TH APPLICANT
MANASE YOHANA.....	98 TH APPLICANT

TIMOTHEO NDEHAKI 99TH APPLICANT

LAMECK KIMATH100TH APPLICANT

EDMUND S. MSOFE.....101ST APPLICANT

PETER MAJAA102ND APPLICANT

OMARY ATHUMAN103RD APPLICANT

ROBERT MSENGI104TH APPLICANT

ANNA J. MWAMBAYA105TH APPLICANT

MWILEE MWANIJEMBE106TH APPLICANT

JOHN MICHAEL107TH APPLICANT

SALEHE BAKARI108TH APPLICANT

AMOS MOSSES109TH APPLICANT

NAKAZA ELIESIKIA.....110th APPLICANT

HASSAN O. KADIO111ST APPLICANT

DONATHA KESSY.....112ND APPLICANT

THERESIA NDAWONI.....113RD APPLICANT

ALISTARIA SWAI114TH APPLICANT

YUDA THADEI115TH APPLICANT

LEONARD ISINIKA116TH APPLICANT

DAUDI YONAH.....117TH APPLICANT

BATISTA POKUMTWA118TH APPLICANT

LONGINO MNYEMA119TH APPLICANT

SAIDI S. ALFAN120TH APPLICANT
DOROTHEA MALUMBA121ST APPLICANT
JOHNSON H. KILawe122ND APPLICANT
LINDERSON J. MOSHI123RD APPLICANT
RAJABU MKATI.....124TH APPLICANT
WALTER W. SHOO125TH APPLICANT
RAPHAEL NYALILE126TH APPLICANT
YAHAYA SAIDI.....127TH APPLICANT
ROSE EMMANUEL128TH APPLICANT
THERESIA CHAPUCHAPU 129TH APPLICANT
ALEX A. NJAU 130THAPPLICANT
VUMILIA MMARY 131ST APPLICANT
RAJABU JUMBE 132ND APPLICANT
DOUGLAS MAKAMBO 133RD APPLICANT
HUSSEIN S. FONGA 134TH APPLICANT
WILSON JUNGWA135TH APPLICANT
AMIRI NGWILIZI 136TH APPLICANT
SHABAN KIVUMA 137TH APPLICANT

VERSUS

CHIEF EXECUTIVE OFFICER TPC LIMITED RESPONDENT

RULING

10/06/2024 & 18/06/2024

SIMFUKWE, J.

The Applicants hereinabove, filed this application seeking extension of time to lodge notice of appeal to appeal to the Court of Appeal against the decision of the High Court in Labour Revision Application No. 33 of 2015 dated 20th July, 2015. The application has been preferred under **section 57 of the Labour Institutions Act**, [Cap. 300 R.E 2019] and **sections 5(1)(c) and 11(1) of the Appellate Jurisdiction Act**, [Cap. 141 R.E 2019]. It was supported by the affidavit deposed by the late Faustin Materu, who was by then the learned counsel for the applicants. Under paragraph 12 (a), (b) and (c) of the affidavit the following legal issues were raised:

- (a) *Whether under **section 4 of the Employment and Labour Relations Act, Cap 366 R.E 2022** there was strike at TPC Co. LTD on 23rd and 24th of January 2007.*
- (b) *Whether an employee who was off duty can under **section 4 of the Employment and Labour Relations Act (supra)** be held*

to have taken part in a strike at TPC Co. LTD on 23rd and 24th of January 2007.

- (c) *Whether under the **Employment and Labour Relations Act** (supra) the applicants were legally terminated and if not whether they are entitled to be reinstated and to be paid compensation under the Act.*

The hearing of the application was done by way of written submissions whereas Mr. John Faustin Materu, learned counsel argued the application for the applicants and the respondent enjoyed the service of Mr. David Shilatu, learned counsel.

Advocate John Materu started his submission in chief by adopting the contents of the affidavit in support of the application to form part of his submission. He submitted among other things that it is not disputed that applicants did file Civil Appeal No. 194 of 2020 before the Court of Appeal of Tanzania against the decision of this court in Revision No. 33 of 2015. The said appeal was found to be defective for failure to disclose names of all applicants and was withdrawn on technical ground on 05th July 2023. Thereafter, the applicants were forced to restart the appeal process by filing the present application.

The learned counsel averred that, the delay in filing fresh notice of appeal has therefore been caused by what is termed as technical delay. He

buttressed his averment by citing the case of **Bank M (T) Limited v. Enock Mwakyusa**, Civil Application No. 520/18 of 2017 (unreported) at page 8 where the Court of Appeal of Tanzania held that:

*"In **Rwegasira** (supra), for instance, the full Court quoted the holding and subscribed to the position taken by a single Justice of the Court in **Fortunatus Masha** (supra), the holding which I cannot resist the urge to recite:*

A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

Mr. Materu went on to quote from page 10 of the cited decision where the Court continued to hold that:

"I subscribe to the view taken by the Court in the above cases. The applicant Bank, having been duly penalized by having Civil Appeal No. 109 of 2012 struck out by the Court and the High Court (Labour

*Division) dismissing Miscellaneous Application No. 133 of 2017, the same cannot be used yet again to determine the timeousness of applying for filing the fresh Notice of Appeal in a bid to file a fresh appeal. **On the authority of the decisions of the Court cited, that was an excusable technical delay on the part of the applicant which constitutes good cause under rule 10 of the Rules,** under which the notice of motion has, inter alia, been taken out, to grant the order sought.”(emphasis supplied)*

Also, Mr. Materu subscribed to the case of **Director General LAPF Pension Fund v. Pascal Ngalo [2020] TLR 216.**

The learned counsel referred to paragraph 12 of the affidavit which shows that there are legal issues which arose from the decisions in CMA/MOSHI/ARB/04/2007 and Revision No. 33 of 2015 to be addressed and determined by the Court of Appeal in the intended appeal. He stated that the legal issues constitute points of law worth consideration by the Court of Appeal under **section 57 of the Labour Institution Act** (supra). It was stated further that it is settled position of law that a claim of illegality in the decision sought to be appealed against constitutes sufficient reasons for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay. Mr. Materu cemented his point by referring to the case of **Attorney**

General v. Tanzania Ports Authority & Another, Civil Application No. 87 of 2016 (unreported) at page 12 where the Court of Appeal held that:

*"In my considered view, the applicant's claim on illegality of the challenged decision is one of the special circumstances constituting sufficient causes for extension of time under Rule 10 of the Rules, regardless of whether or not a reasonable ground has been given to account for the delay. (See: **VIP Engineering & Marketing and 2 Others vs Citibank Tanzania Limited** (supra) and the case of **Ministry of Defence, National Service vs Davram [1992] T.L.R 185**)"*

Mr. Materu concluded that the applicants have demonstrated good cause for this court to grant the application for filing Notice of Appeal out of time. He prayed this application to be granted.

Mr. David Shilatu learned counsel for the respondent started his reply submission by adopting his counter affidavit to form part of his submission. He submitted that the applicant's prayer is centered on technical delay and illegalities.

On the first ground Mr. Shilatu contended that technical delay is applicable in a situation where the first appeal or application was timely filed but failed to proceed due to some other factors. That is to say the applicant in the previous matter failed to proceed and he is given the second chance

to enjoy adjudication by the court. The learned counsel said that the same is in line with what was stated in the case of **Fortunatus Masha v. William Shija and Another [1995] TLR 154** which was referred in the case of **Bank M (Tanzania) Limited v. Enock Mwakyusa** (supra). He did not dispute the fact that this application is referring Civil Appeal No. 194 of 2020 of the Court of Appeal of Tanzania at Moshi which its withdrawal paves a way for a claim of technical delay in the instant application. That is Misc. Application No. 07 of 2023 of the High Court of Tanzania, Moshi Sub-registry. However, Mr. Shilatu was of the view that in the eyes of the law Civil Appeal No. 194 of 2020 is not related to Misc. Application No. 07 of 2023 of the High Court. He explained that Civil Appeal No. 194 of 2020 involved 150 appellants while Misc. Application No. 07 of 2023 involved 137 applicants. Hence, the instant application marks a new application and that the concept of technical delay cannot apply.

On the second ground, Mr. Shilatu asserted that illegalities must be on the face of records to warrant extension of time. He said that what have been highlighted by the applicants herein on paragraph 12 (a), (b) and (c) of the applicants' affidavit are the points of determination. He stated further that, for illegality to form basis of extension of time, it must be clearly visible upon the face of the record as explained in the case of

Joyce Joram Lemanya v. Patrick Lemanya and Another, Civil Application No. 430 of 2021, Court of Appeal of Tanzania at Dodoma. He formed an opinion that there are no available records of proceedings involving parties herein regarding the said claim.

The learned counsel prayed this court to find the instant application to have no merit and dismiss it.

Rejoining on the issue of different number of appellants before the Court of Appeal and the applicants herein; Mr. Materu submitted that it was true that in Civil Appeal No. 194 of 2020 the appellants were 150. He said that after the said appeal was struck out it was 137 applicants out of the said 150 appellants who were interested in refiling the intended appeal to the Court of Appeal. He observed that there is no law and none had been cited by the respondent's counsel that forces all applicants in Labour Revision No. 33 of 2015 to appeal to the Court of Appeal of Tanzania against the decision of the High Court in that revision. He said, that is the essence of **Rule 83 (1) of Tanzania Court of Appeal Rules, 2009** as amended which reads:

"Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the registrar of the High Court." Emphasis added

From the above provision, Mr. Materu said that 13 out of 150 applicants in the High Court Revision No. 33 of 2015 did not desire to appeal against the decision of the High Court. Therefore, though Misc. Application No. 07 of 2023 involves 137 applicants against the Chief Executive Officer TPC Ltd nevertheless, it is intended to challenge the decision of the High Court. He insisted that it is not a new application and the concept of technical delay applies to this application. Also, Mr. Materu reiterated that the case of **Bank M (Tanzania) Limited v. Enock Mwakyusa** (supra) annexed to their submission in chief and respondent's reply submission, supports the applicants that the delay in filing notice of appeal is technical one.

Mr. Materu submitted further that, in determining illegalities the court looks at the decision sought to be appealed against and not proceedings of the subordinate courts as suggested by the respondent's counsel. He elaborated that the word record means the decision sought to be appealed against. The learned counsel distinguished the case of **Joyce Joram Lemanya v. Patrick Lemanya and Another** (supra) cited by Mr. Shilatu. He said that first, the illegalities in the said case were not visible upon the face of the record while in this application the illegalities are clearly visible in the decision of the High Court in Revision No. 33 of 2015. Secondly, the cited decision was a second bite application for extension

of time that was dismissed on account of ignorance of the law being not good cause for extension of time. He contended that in this application the applicants have managed to explain the delay in filing the application for extension of time to lodge a fresh notice of appeal after their appeal i.e. Civil Appeal No. 194 of 2020 was struck out. That, immediately after getting copy of the Court of Appeal order the applicants lodged the present application for extension of time. He insisted that applicants demonstrated vigilance in pursuing the matter as it was held in the case of **the Attorney General v. Tanzania Ports Authority and Another** (supra).

In conclusion, Mr. Materu reiterated his prayer in submission in chief that this application be granted.

I have considered the affidavit in support of the application, the counter affidavit and the rival submissions of both parties. The issue for determination is **whether this application has merit.**

It is trite law that, extension of time can only be granted upon good cause being shown and where the delay has not been caused or contributed by negligence or sloppiness on part of the applicant. In the case of **Brazafic Enterprises Ltd vs Kaderes Peasants Development (PLC) (Civil**

Application 421 of 2021) [2022] TZCA 624 (13 October 2022)

[Tanzlii] at page 8 & 9 the Court of Appeal stated that:

*"It is noteworthy that there is no universal definition of the term 'good cause'. Therefore, **good cause may mean among other things, satisfactory reasons of delay or other important factors which needs attention of the Court, once advanced may be considered to extend time within which a certain act may be done...**"*Emphasis supplied

Based on the above quoted decision, for extension of time to be granted, the applicants are duty bound to advance good cause for their delay. The court invoking its discretion must take into consideration the length of the delay, the reasons for the delay and whether the applicants have accounted for each day of delay.

The learned counsel for the applicants raised the issue of technical delay as the reason for the delay to file the intended Notice of Appeal. In the affidavit, it was deponed that the former Notice of Appeal was filed in time but it was withdrawn together with Civil Appeal No. 194 of 2020 on the reason that names of the applicants were not disclosed in the Notice of Appeal and Memorandum of Appeal. In his counter affidavit and reply

submission, Mr. Shilatu strongly believed that since the number of applicants has decreased from 150 to 137, then this application is a fresh case which is not related to the former cases. Respectfully to the learned counsel for the respondent, right to appeal is a constitutional right as provided under **Article 13 (6) (a) of the Constitution of the United Republic of Tanzania**. As a matter of practice where there are many litigants, one cannot force his fellow to pursue his rights if he is not willing. It goes without saying that rights of a person cannot be defeated upon reluctance of another person to proceed with the case. Therefore, the assertion that this application is not related to the former appeal and applications is unfounded.

Back to the merits of this application; it is undisputed fact that the former Notice of Appeal was withdrawn together with an incompetent Civil Appeal No. 194 of 2020 on 05/07/2023. Then, the applicants filed the application at hand on 20/07/2023, after the lapse of about 14 days. I am obliged to find that the delay of 14 days is ordinate. Having in mind the raised legal issues sought to be considered by the Court of Appeal and the established technical delay, this application deserves to be granted.

Consequently, I grant extension of time to the applicants to file their Notice of Appeal within 14 days. No order as to costs.

It is so ordered.

Dated and delivered at Moshi this 18th day of June 2024.



X

A handwritten signature in blue ink, appearing to read "S. H. Simfukwe", is placed over a light blue rectangular background.

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE

18/06/2024