

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 601 OF 2016

JACOB MASSAWE.....APPLICANT

VERSUS

THOMAS SECONDARY SCHOOL.....RESPONDENT

RULING

Date of Last Order: 06/02/2018

Date of Ruling: 23/02/2018

L.L.Mashaka, J

The applicant Jacob Massawe has filed this application seeking for extension of time to lodge Notice of Appeal out of time against judgment of this Court in Revision application No.186 of 2014 between the same parties.

The application is made by Notice of application, Chamber summons and supporting affidavit of George Dogani Mwalali, who is also Advocate representing the applicant in this application. The application is made under Rule 24(1),24(2)(a)(b)(c)(d)(e) and (f),(3)(a)(b)(c)(d) and Rule 56(1)(3) of the Labour Court Rules, Government Notice No. 106/2007 and Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2002.

During the hearing which proceeded orally before the Court Mr. George Dogani Mwalali, Advocate represented the applicant and the respondent was represented by Mr. Gaspar Tluway, Advocate

Learned Counsel for the applicant prayed for the supporting affidavit of his application to be adopted to form part of his submission. Learned Counsel prays for extension of time to file notice of appeal out of time in respect of judgment and decree of this Hon. Court in Revision No. 186 of 2014 between **Jacob Massawe Vs. St. Thomas Secondary School**.

Learned Counsel, in the outset referred this Court to the case of **James Ikongo & Anor Vs. Charles Rushakuzi**, Misc. Civil Appl. No. 115 of 2015, High Court at Dar Es Salaam (unreported) at page 7, per Hon. Muruke, J where the Court stated that it is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This discretion however has to be exercised judiciously and the overriding consideration is that there must be sufficient cause for so doing.

Learned Counsel contends that the word "sufficient cause" was not defined anywhere but there was another case of **Yusuf Same & Anor Vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002, Court of Appeal of Tanzania at Dar Es Salaam did say something on what is 'sufficient cause' at page 7, paragraph 2. That a number of factors have to be taken to account.

That at paragraph 3 of his affidavit tells that the judgment and decree of Revision No. 186 of 2014 was delivered on the 14/12/2015 and was served the same on the 15/01/2016. On the 01/02/2016 he filed an application for extension of time to lodge notice of appeal in respect of the

judgment decree cited above. The same was struck out on the 26/09/2016 on reasons that the appeal to the Court of Appeal is automatic.

Learned Counsel argued that after his thorough research he found another decision of the Court of Appeal of Tanzania which is Annexure JM 2 to his affidavit. It is a decision of the Court of Appeal of Tanzania, refer paragraph 6 of their affidavit, where the Court of Appeal of Tanzania held that it is not provided in the labour legislation that there is an automatic right to appeal to the Court of Appeal of Tanzania of which leave is not required. That they have to seek leave to go to the Court of Appeal of Tanzania. That the applicant has raised sufficient cause for the application to be granted as stated in their affidavit.

Learned Counsel referring the ruling in the case of **James Ikongo** (supra) at page 9, paragraph 2, submitted that Hon. M^uruke, J has raised a new principle.

Learned Counsel prayed to refer the Court to the case of **Mobrāma Gold Corporation Ltd Vs. Minister for Energy and Minerals & Anor, (1998) TLR 425**, where Hon. Mapigano, J held that it is generally inappropriate to deny a party extension of time unless such delay causes prejudice to his opponent. It was his conclusion that there is no prejudice which will be caused to the respondent if extension of time is granted to the applicant to challenge the judgment of this Court, that the Trial Judge was wrong to throw out the revision application thus prayed to the Court that their application to be granted.

In response Learned Counsel for the respondent prayed to adopt the contents of counter affidavit deponed by one Upendo Shija Makuza and argued that the Learned Counsel in his affidavit did not raise any good cause that can enable this Hon. Court to grant the application for extension of time.

That in the referred case of **TBL Vs. Leo Kobelo** annexure JM 2, this judgment was delivered on the 4th October 2016, while the present application for extension of time Misc. Appl. No. 27/2016 was struck out on the 26th September 2016. That said, the ruling of the Court of Appeal of Tanzania came out on 04th October 2016, meaning that this ruling was delivered 8 days after the Misc. Appl. No. 27 of 2016 was struck out. That means before the Court of Appeal of Tanzania gave the decision, the position was as in the ruling in Misc. Appl. No. 27 /2016 between **Jacob Massawe Vs. St. Thomas Sec. School**, where the appeal to the Court of Appeal of Tanzania was automatic under Section 57 of the Labour Institutions Act. No. 7 of 2004. That appeal to the Court of Appeal of Tanzania was automatic.



He insisted that the decision of the Court of Appeal of Tanzania does not act retrospective to other decisions which had already been made by this Court. So that is not a sufficient reason raised by the Learned Counsel for the applicant. Learned Counsel referred the ruling in the case of **James Ikongo (supra)** at page 7, that the discretion of the Court comes when there is a good reason advanced by the applicant. That throughout the affidavit of the applicant and the submission before the Court, the applicant failed to show or advance which reasons made him be out of

time to file the application for notice of appeal to appeal to the Court of Appeal of Tanzania. The applicant was supposed to mention which reasons hindered him to file the application within the prescribed time and after mentioning the reasons, he is supposed to describe on each reason on how it hindered him to file the said application on time.

That the failure by the applicant to mention the reasons and elaborate on how the reasons or factors caused him to fail to file the application within time before the Court, they submitted that the application be dismissed.

In rejoinder, Learned Counsel Mwalali pointed out that Learned Counsel for the respondent had not read his affidavit from paragraphs 3 -6, where he has elaborated the reasons for delay he therefore prayed to reiterate his submission in chief as he had elaborated the decision of the Court of Appeal of Tanzania after making his own research. That it was caused with the misunderstanding of the Court and beyond his ability and power.

Learned Counsel also referred the case by Hon. Muroke, J that the sufficient cause should not be interpreted narrowly refer page 9, paragraph 1 of the ruling. That the decision of the Court of Appeal of Tanzania is binding upon the High Court and he got another decision which he annexed to his affidavit. Learned Counsel prays for extension of time to file notice of appeal to appeal to the Court of Appeal of Tanzania. They feel that there is some weakness in the judgment of this Court and it should be challenged at the Court of Appeal of Tanzania.



He concluded that they have raised good cause to go to the Court of Appeal of Tanzania to challenge the judgment of this Court.

After hearing submissions by both parties the issue for determination by this Court is whether or not the applicant has adduced sufficient reason for this Court to grant the extension of time to lodge Notice of Appeal out of time. As per applicant's supporting affidavit the reason for delay is that he failed to know whether the judgement was delivered or not, inspite of making frequent follow up to the Court Clerk and later became aware of the delivery of the judgement when supplied with the copy of the same on the 15/01/2016. He made an application for extension of time to file Notice of Appeal out of time in Miscellaneous Application No. 27 of 2016 between the same parties but was struck out on 26/09/2016 for the reason that appeal to the Court of Appeal of Tanzania was automatic as per decision of **Bulyanhulu Gold Mine Vs. Nicodemus Kajungu & 1551 Others**, and later made a thorough research on the issue and discovered that there was another decision of the Court of Appeal of Tanzania which made it clear that leave was mandatory in the case of **TBL Vs. Leo Kobelo**, Civil Appl. No. 17 of 2016 delivered on 13/10/2016, while the Misc.Appl.No. 27 of 2016 had already been struck out. The applicant does not disclose what went on from when he was served with the judgement in Revision Application No. 186 of 2014 on 15/01/2016. Seemingly that he failed to file the Notice of appeal within time from the day of 15th January 2016 when served with the Judgement hence filed Miscellaneous Application No. 27 of 2016 which was struck out on 26/09/2016, was for leave to appeal to the



Court of Appeal of Tanzania. However the applicant failed to file this application until the 27th December 2016.

As rightly submitted by Learned Counsel for the respondent, the applicant has not mentioned any reason for delay from when he became aware of the Judgement in dispute to appeal against it. In dealing with application for extension of time in this Court, under Rule 56 (1) of the Labour Court Rules Government No. 106/2007 rightly quoted by the applicant sets ground to grant of the same to be on good cause shown. The applicant has not shown any good cause for delay thereto, after the Misc. Appl No. 27 of 2016 was struck out on the 26/09/2016 to file application to lodge notice of appeal to the Court of Appeal of Tanzania.

In the case of **Tanzania Fish Processors Ltd Vs. Christopher Luhangula**, Civil Appeal No 161/1994 Court of Appeal of Tanzania, at Mwanza registry held that:

"the question of Limitation of time is fundamental issue involving jurisdiction ...it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to Court as and when he chooses..."



The applicant has failed to adduce sufficient reasons for the grant of the application as explained hence the application is worthy of being dismissed for want of merit.

The last issue for clarity bearing in mind the submissions by Learned Counsel for the applicant, but which will not change the decision reached

above is on the research done by Learned Counsel for the applicant that the recent decision of the Court of Appeal of Tanzania in **Tanzania Breweries Limited Vs. Leo Kobelo**, Civil Appeal No.29 of 2009, CAT [unreported], Mjasiri, JA, delivered on 13/10/2016 override the decision in **Bulyanhulu Gold Mine (T) Ltd Vs. Nicodemus Kajungu & 1511 Others**, Civil Application No.37/2013 on need of leave to appeal against the decision from this Court is **misleading** and **inadequate** research therein because on the 14th August 2017 when Learned Counsel appeared before this Court informed the Court that there was a decision of the Court of Appeal of Tanzania that leave of the High Court Labour Division is not required when one needs to appeal to Court of Appeal against the decision of this Court. He prayed for time to satisfy himself on that position of the Court of Appeal Tanzania hence prayed for another hearing date on when he could make a prayer to withdraw but on the 25/08/2017 Learned Counsel for the applicant appeared before this Court and insisted that there was the decision of full bench of the Court of Appeal that leave of this Court was required thereto and the same was attached in his supporting affidavit hence prayed for hearing date of his application.



On the 5th June 2017 the Full Bench of the Court of Appeal of Tanzania, Juma, Ag. C.J., Mjasiri,J.A, Mwarija,J.A, Mziray,J.A and Mkuye,J.A, in the case of **Tanzania Teachers Union Vs. The Chief Secretary & 3 Others**, Civil Appeal No.96 of 2012, Court of Appeal of Tanzania at Dar Es Salaam [unreported] at page 36 made it clear that:-

*"...the decisions made in **Zayumba Abedi Hussen A Akida and Others Vs. Tanzania Ports Authority (supra)**,*

Hussen Shabonga Jumanne and 6 Others Vs. Tanzania Ports Authority (supra), and Tanzania Breweries Limited Vs. Leo Kobelo (supra) were incorrectly decided.....for the avoidance of doubt, the right of appeal from; Labour Court under Section 57 of the LIA shall no longer be conditional or predicated in obtaining leave to appeal or certification of point of law by High Court....”

From that above, it is obvious that the submission by Learned Counsel for the applicant was not based on an updated legal research on whether leave is required or not to appeal the decision of this Court to the Court of Appeal of Tanzania.

Conclusively, the present application is dismissed for lack of merit as explained.



L.L. Mashaka

JUDGE

23/02/2018