

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS APPLICATION NO. 331 OF 2019

MAKOYE JUMA NDEMELA & 9 OTHERS.....APPLICANTS

VERSUS

AL - HUSHOOM INVESTMENT (T) LTD.....RESPONDENT

RULING

Date of last Order: 09/03/2020

Date of Ruling: 27/03/2020

Z.G.Muruke, J.

On 31st August, 2018 the applicants filed an application for condonation before CMA. Same was dismissed for lack of merits on 28th December,2018. Being dissatisfied, applicants filed revision on 31st January, 2019 to challenge CMA decision. Their application was rejected at the registry for failure to attach ruling sought to be challenged. They thus filed present application for extension of time to file revision on 3rd June, 2019. Respondent filed counter affidavit sworn by Evance Ignace to resist the application. On the date set for hearing, applicants were represented by Rozimery Kirigiti while respondent was being represented by Evans Ignace advocate. By consent hearing was by way of written submission. Both parties complied with the schedule hence this ruling.

Applicant counsel submitted that, her clients filed revision on time that was rejected for failure to attach ruling sought to be challenged. However, blamed registry clerk who told applicants that, they will be communicated once application is admitted. To the contrary their

applications was rejected. To the applicant counsel, the registry officer of the Labour Court is the cause.

Applicant counsel insisted that, applicants delay was not negligence rather on the basis of misdirection, citing the case of Sadiki **Athumani Vs. Republic (PC)** Criminal Appeal number 5/1995 in which Samata, J as he then was High Court Judge held that, **the requirement that a party to proceedings must be given the opportunity to state his views is a fundamental principle of natural justice.** On further account, applicant counsel maintained that, court being the authority with final decision in dispensing justice, should not be tied up with technicalities which may obstruct dispensation of justice, as started under Article 107A (1)&(2)(e) of the constitution of the United Republic of Tanzania as amended from time to time.

On the other hand respondent counsel submitted that a prudent lawyer representing the applicants, ought to have been diligent by following the status of their application in court, instead of waiting for the alleged promise of a text message. Further, such ground is a mere assertion which has not been proved by an affidavit of the Officer of the court Registry who promised them as such. Equally, this allegation as relied upon by the applicant is also not supported by the affidavit of Msimu Selemani's Affidavit (the Applicant's Legal Officer) who was promised as by the Court Registry Officer. Therefore, such reason is not sufficient to warrant this court to grant the reliefs prayed.

The above position was discussed in the Court of Appeal of Tanzania, **Civil Reference No. 12 of 2004: David Mwakikunga Versus Mzumbe University, successor in Title of IDM Mzumbe, (unreported)**. His Lordship Honourable Kaji, J.A ruled under page 6, 7 and 8 as follows: (Copy attached).

“From these, together with the applicant’s Oral submissions, it is clear to us that, the applicant is blaming the Civil Registry staff of the High Court for misleading him that the copy had first to be endorsed by the registrar before it was served on the respondent, and that the registry never returned to him the copy which he would otherwise have served the respondent. There is neither affidavit nor evidence of any kind from the registry office confirming the same..... whatever the case, in our view, none of these amounts to sufficient ground for his failure to serve the respondent with the copy of the letter. (Emphasis added)

The law is very clear in the sense that, he who alleges must prove. It is apparent that, the applicant has failed to prove their blames against the Court Registry and have just demonstrated bare allegations which could not be relied upon.

If applicant sought to revise any court decision, a copy of the decision in question must be attached. This is not a genuine reason for delay since the same has been occasioned by sheer negligence of the applicant’s advocate. If at all the applicants had good intention to file the said application on time, they would have acted diligently and make sure that the filed documents are in order. The Courts of law have always ruled that, the act of inaction and negligence either of the Advocate or a party to the suit to act diligently cannot be a reason to seek for extension of time.

Respondent counsel insisted that the principal of natural justice pointed out by the applicant's advocate in the submission can only operate to save a party to a suit who has clean hands legally entitled to it. The applicants cannot seek refuge under this principles, since they are also to be blame for the said delay an account of negligence. Further, the case of **SADIKI ATHUMANI VS. REPUBLIC** cited by the learned counsel in the submissions is distinguishable to the present application.

I have carefully considered and weighed the rival arguments from both parties. I feel it is necessary to reiterate, as a matter of general principle that whether to grant or refuse an application for extension of time like the one at hand, is entirely in the discretion of the Court. It is now settled principle of law that in an application for extension of time applicant is required to show sufficient cause for delay. Sufficient cause would be shown for the delay in taking the necessary steps in instituting an appeal or filing application as is the time prescribed under the specific law. However, it is to be observed that the court can only exercise its power under the law to extend time if sufficient cause is shown to explain the delay. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice.

Does filing incompetent application amounts to sufficient cause to justify extension? To the best of my understandings in deciding whether or not to allow an application to file revision out of time, the court has to consider whether or not there is sufficient reasons. Not only for the delay, but also sufficient reasons for extending the time during which to entertain the revision.

In case of **Benedict Mumello Vs. Bank of Tanzania** Civil Appeal No. 12/2002 (unreported) it was held that.

"it was trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it. And that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

In the case of Blue line Enterprises Ltd Vs. East African Development Bank Misc. Civil Cause No. 135/1995 where Katiti, J held that:-

"It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by court."

In the case of **Republic Vs. Yona Kaponda and 9 others [1985]** **T.L.R. 84** the Court of Appeal of Tanzania set the yardstick of the circumstances under which extension of time can be granted it was started as follows:-

It is now settled that in an application for extension of time applicant is required to show sufficient cause for delay. Sufficient

cause would be shown for the delay in taking the necessary steps in instituting an appeal or filing application as is the time prescribed under the specific law. However, it is to be observed that the court can only exercise its powers under the law, to extend time if sufficient cause is shown to explain the delay.

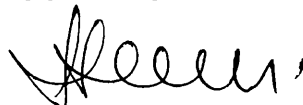
From the content of affidavit in support of the application above, it's clear that Registry officer who told applicants that will be notified by Message his/her name not mentioned. Assuming it was mentioned, which is not the case, yet, an affidavit of Registry officer should have been attached to applicants affidavit to support the averments. More seriously is absence of affidavit of legal office Mr. Msimu Selemani to prove the promise by court clerk. Bare assertion, as articulated in the affidavit sworn by Makoye Juma Ndemela cannot be accepted. Affidavit is oral evidence reduced in to writings, need to be water tight. Allegations without proof cannot be accepted in the eyes of the law. It is also very clear that, their incompetent revision was rejected on 31st January, 2019. It took about four months to file present application for extension of time. For sure there is no promptness. This shows lack of diligence and seriousness by the applicants.

There is no accounting of about four months passed before filing current application. In an application for extension of time, each day passes beyond prescribed time counts and has to be counted for. What applicant has shown in his affidavit form paragraph 5 - 9 is pure and simple negligence by the applicants. It has been held time out of number, ignorance of law has never featured as good cause for extension of time. It

is worth noting that a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be apprised of it, for otherwise he/she will have nothing to offer as an excuse for sloppiness.

Indeed, it is my view that applicant case does not only demonstrate lack of seriousness and diligence, but also gross negligence on the part of the counsel for the applicant in handling the affairs of his client. In the case of **William Shija Vs. Fortunatus Masha 1997 TLR 213** the Court of Appeal held that negligence on the part of the counsel who caused the delay cannot constitute sufficient reason.

Unfortunately, it is the acts and omission of the applicant that has delayed the wheels of justice. Respondent should not be unfairly treated because of applicant counsel's negligence. To permit the applicant, another extension sought would neither be just, expeditious, economical, nor in the interests of justice. Application lacks sufficient cause. Accordingly dismissed.



Z.G.Muruke

JUDGE

27/03/2020

Ruling delivered in the presence of two applicants Vitus Mario and Salum Hassan Likando and in the presence of Arafat Ally, Human Resource Manager of the respondent. Right of Appeal dully explained.



Z.G.Muruke

JUDGE

27/03/2020