

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 68 OF 2020**

**BETWEEN**

**MARY MBELLE.....APPLICANT**

**VERSUS**

**AKIBA COMMERCIAL BANK LTD .....RESPONDENT**

**RULING**

Date of Last Order: 16/06/2020

Date of Ruling: 24/07/2020

**Aboud, J.**

This is an application for extension of time within which to file a Notice of Appeal to the Court of Appeal against the judgement and decree of the High Court of Tanzania, Labour Division at Dar es Salaam by Hon. A. C. Nyerere, J. in Revision No. 262 of 2016 dated 27<sup>th</sup> July, 2017. The application was filed under the provision of section 94 (1) (e) of the Employment and Relations Act, [CAP 366 R.E 2020] (herein the Act), section 11 (1) of the Appellate Jurisdiction Act, [CAP 141 R.E 2002] and Rule 24 (1), 24 (2) (a), (b), (c), (d), (e),

(f), 24 (3) (a), (b), (c), (d) and Rule 55 (1) (2) of the Labour Court Rules GN. 106 of 2007 (herein Labour Court Rules).

This application emanates from a very long background as follows; the applicant was employed by the respondent as a Public Relations Officer on 02/10/2006 later on promoted to the position of Head of Marketing and Communications until 2015 when she was demoted. Aggrieved by the said demotion she filed a complaint to the Commission for Mediation and Arbitration (herein CMA) where it was found out that the CMA had no jurisdiction to entertain the dispute. The dispute was then filed to this Court as a Labour Dispute No. 09 of 2013 where the demotion was found to be unfair and illegal and the respondent was ordered to reinstate the applicant to the position of Head of Marketing and Communications. That on 01/12/2015 the applicant filed execution application registered as Execution No. 389 of 2015.

It is on record that, upon execution the Deputy Registrar corrected the merit of the award and ordered the respondent to pay the applicant compensation of 12 months as in accordance with section 40 (3) of the Act. Aggrieved by the Deputy Registrar's order the applicant filed Revision Application No. 262 of 2016 where on

27/07/2017 Hon. Nyerere upheld the Deputy Registrar's order. Being resentful with such decision, on 28/07/2017 the applicant filed a Notice of Appeal which was struck out because the copies of judgement, decree, proceeding and certified documents were not filed on time. Following the struck out order the applicant again filed applications twice for extension of time which were also struck out for being defective. Then the applicant used the available opportunity to file the present application for extension of time.

At the hearing, the applicant appeared in person while the respondent enjoyed the services of Ms. Oliva Mkanzabi, Learned Counsel from Gabriel and Co. Attorneys at Law. The matter was argued by way of written submission, both parties complied to the schedule hence this ruling.

Arguing in support of the application the applicant analyzed the background of the dispute as summarized above. As to the merit of the application the applicant submitted that, aggrieved by the decision of Hon. Nyerere delivered on 27/07/2017 in Revision No. 262 of 2016 she lodged the Notice of Appeal on 28/07/2017. She said on 31/07/2017 she wrote a letter requesting for copies of Judgement,

Decree and Court proceeding of the impugned decision and the same were supplied to her on 02/08/2017.

The applicant went on to submit that, on 25/09/2017 she requested for certified exhibits and other necessary documents and the same were obtained on 05/10/2017 without a certificate of delay. She added that the relevant documents were lodged to Court of Appeal on 11/10/2017. She further submitted that the Court of Appeal suo motto raised a concern that the Appeal was filed out of time on the ground that the memorandum and record of appeal were lodged beyond 60 days required by the law. Under such circumstances the applicant prayed for the application to be granted as she is of the view that she has strong and valid grounds to proceed with her journey in seeking for justice in the Court of Appeal. She therefore prayed for the application to be granted.

Responding to the application Ms. Oliva Mkanzabi submitted that the applicant failed to demonstrate any good cause for the grant of the application at hand neither accounted for each day of the delay. To support her argument she cited the case of Salome **Mussa Lyamba Vs. K.K Security (T) Limited**, Rev. No. 278 of 2010 which established three principles for an extension of time to be granted to

wit, promptness, good cause for the delay and lack of negligence. Ms. Oliva Mkanzabi stated that the applicant failed to justify those principles in the application at hand. She therefore prayed for the application to be dismissed.

In rejoinder the applicant reiterated her submission in chief and added that all the principles established by the respondent were followed in this application. She therefore prayed for the application to be granted.

After considering the parties' long submissions and court records then the issue for determination is, whether the applicant adduced sufficient reasons for the delay in filing Notice of Appeal.

This Court's power to extend time to file Notice of Appeal is derived from section 11 (1) of the Appellate Jurisdiction Act. The relevant provision is to the effect that:-

"Section 11 (1) subject to subsection (2), the High Court or, where an appeal lies from a subordinate Court exercising extended powers, the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for

appeal, notwithstanding that the time for giving the notice or making an application has already expired”.

It is a trite law that for the Court to exercise its discretion to extend time to do an act the applicant must demonstrate sufficient cause for the delay. What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal case of **John Mosses and Three Others Vs. The Republic, Criminal Appeal No. 145 of 2006** when quoting the position of that court in the case of **Elias Msonde vs. The Republic, Criminal Appeal No. 93 of 2005** where Mandia, J.A. held that:-

“We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part”.

Again in the case of **Blue Line Enterprises Ltd. Vs. East African Development Bank**, Misc. Application No. 135 of 1995, the Court 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 instant matter, as analyzed above, it is clear from the dispute background that several applications have been instituted regarding the matter at hand. However, the applicant's main reason for the delay of filing this application is that he was supplied with the copies of the judgement, decree, proceeding and certified exhibits out of time and without certificate of delay. It is on record the impugned decision was delivered on 27/07/2017 and immediately after such decision on 28/07/2017 the applicant filed notice of appeal. But the documents to be attached with the notice to wit judgement, decree and proceeding were not given to her on time by

this Court and without certificate of delay. Consequently the filed notice of appeal was struck out on 30/10/2018.

The applicant filed her first application for extension of time to file notice of appeal on 12/11/2018 which was struck out on 25/03/2019 for being defective. Soon thereafter the applicant filed the second application for extension of time on 10/04/2019 which was again struck out on 26/02/2020 for non-citation of enabling provision of law. Again on 09/03/2020 she filed the present application.

In the case of **Fortunatus Masha vs. William Shija and Another** [1997] TLR 154 it was held 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 dully penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal.”


On the basis of the above case indeed the distinction has to be made between technical and actual delays. In the present application the applicant faced some technical delays but she had never acted negligently in pursuing the matter at hand. Therefore, denial of this application will be a total infringement of the right to be heard contrary to the fundamental principles of natural justice. Section 11 of the Appellate jurisdiction Act confers discretion on the court to grant an extension of time. However, the discretion so conferred must be exercised judiciously after taking into consideration the

circumstance of a case, to ascertain whether the applicant acted prudently and without delay.

Under the circumstance of this case I am of the view that, the applicant was not reluctant or she did not sleep of her right in pursuing her case. From the date of the impugned decision to date she showed fully concern about her case. Applicant has shown diligence and has also accounted for the delay. She has been knocking the doors of this court to be availed with the chance to file the Notice of Appeal. Such efforts cannot be ignored by this Court as they constitute sufficient and reasonable cause to grant an extension of time to file Notice of Appeal.

In the result the present application has merit, the application for extension of time is granted and the relevant notice is to be filed on or before 07/08/2020. Leave to serve the respondent a copy of the said Notice of Appeal and to have a Certificate of Delay is also granted as prayed.

It is so ordered.

  
I.D. Aboud  
**JUDGE**  
24/07/2020