

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 392 OF 2019

BETWEEN

PATRICK MBAGO.....APPLICANT

VERSUS

MAXCOM AFRICA LIMITEDRESPONDENT

RULING

Date of Last Order: 02/06/2020

Date of Ruling: 19/06/2020

Aboud, J.

This is an application for extension of time to file proper application for revision. The application was made under the provision of Rule 24 (1), 24 (2) (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c) (d) and Rule 56 (1) of the Labour Court Rules GN. 106 of 2007 (Herein Labour Court Rules).

The application emanates from the Court's order dated 21/05/2019 in Revision application No. 653 of 2018. The said application was withdrawn for being incompetent with leave to refile within 14 days. The deadline for the applicant's to file proper

application was on 03/06/2019. The applicant failed to file the application within 14 days as granted for the reasons which will be advanced in this application. He therefore filed the present application for extension of time.

The matter was ordered to proceed by way of written submission, where by the applicant filed his submission while the respondent did not. Hence the court proceeded ex parte under the provision of Rule 37 (1) of the Labour Court Rules. During hearing the applicant appeared in person, unrepresented.

Arguing in support of the application the applicant submitted that, he failed to file the proper application on time due to the reason that he was seriously sick. That on 01/06 he was admitted at BETHEL DISPENSARY MWENDAPOLE KIBAHA. He added that he was seriously sick for five consecutive days from 01/06/2019 to 05/06/2019 as evidenced by exhibit PM1 (medical certificates) annexed in his affidavit in support of the application.

He further submitted that, the application for extension of time is within the discretion of the court to grant or refuse. The position which was firmly stated in the case of **Benedict Mumello vs. Bank**

of Tanzania, Civ. Appl No. 12 of 2002 where the Court of Appeal held 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, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause”.

The applicant stated that the reason that he was sick is sufficient ground to grant the application at hand. He added that, the application has been brought promptly with the presence and valid explanation as to why the court should grant the prayers in this application as stated within the chamber summons and affidavit of the applicant as well as in his submission. To cement his argument he referred the case of **Tanga Cement Company Ltd vs. Jumanne D. Masanga and Amos A. Mwalwanda**, Civ. Appl. No. 6 of 2001 CA (unreported) as cited in the case of **Benedict Mumello vs. Bank of Tanzania** (supra).

The applicant stated that the reasons stated in this application are sufficient enough and if the application will not be granted the

applicant will suffer irreparable loss because he will lose his right forever.

He therefore prayed for the application to be considered in its merit and be granted by this Honourable Court so as to ensure that justice is seen to be done.

After considering the applicant's submission and court records then the issue for determination is, whether the applicant adduced sufficient reasons for the grant of the application at hand.

As rightly submitted by the applicant, the power to extend time to do a certain action in court is a discretionary one. The court may grant or refuse to extend time basing on reasons and circumstances of every particular case as firmly stated in the case of **Benedict Mumello vs. Bank of Tanzania** (supra). The reasons for delay may be different in every case, however what is paramount important is for the Court to determine the reasons advanced in the application at hand basing on the nature and circumstances of the particular case.

In the matter at hand the applicant's main reason for delay is that, he was seriously sick for five consecutive days. Now the question is that sufficient reason to grant the application at hand?

What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal in the 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 Mooned 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”.

In applying the principle in that case to the application at hand, the applicant was ordered to file proper application within 14 days. The due date was on 03/06/2019. He failed to meet the deadline because he was sick. In my view if the applicant would have acted diligently he would have filed his application before the deadline because he fell sick on 01/06/2019 which was just two days to the given deadline of fourteen days. He had almost eleven days of filing

proper application before he got sick from 21/05/2019 to 01/06/2019, but he negligently waited for the eleventh hours.

Even if the court will take the applicant's reason that he got seriously sick on 01/06/2019 to 05/06/2019, the applicant have to account for the delay of the period from 05/06/2019 to the time when he filed the present application on 02/07/2019. Thus, he was required to advance sufficient reasons for his delay of almost 25 days. Going through the record the only reason for delay stated by the applicant was that of sickness, but he did not bother to address the court why he did not file the present application immediately after he recovered.

It is a trite principle of law that a party should account for each day of delay, this is the position in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) the Court of Appeal held that; I quote:-

"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

It is undisputed the applicant was sick and admitted to hospital from 01/06/2019 to 05/06/2019. However, he ought to have proved for each day of his delay from 06/06/2019 to 02/07/2019 when he filed the present application. Parties have to note that limitation is there to ensure that a party does not come to court as and when he chooses as was held in the case of **Tanzania Fish Processors Ltd vs. Christopher Luhangula**, Civil Appeal No 161/1994, CAT at Mwanza.

On the basis of the above discussion I have no hesitation to say that the applicant failed to advance sufficient reason (s) to justify to be allowed leave for the extension of time as he prayed. Hence, the Court finds the present application has no merit and is dismissed accordingly.



I.D. Aboud

JUDGE

19/06/2020