

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

MISCELLANEOUS LABOUR APPLICATION NO. 481 OF 2019

BETWEEN

ALEX LWABWINA APPLICANT

VERSUS

BP TANZANIA LIMITEDRESPONDENT

RULING

Date of Last Order: 04/05/2021

Date of Ruling: 01/07/2021

Aboud, J.

This is an application for extension of time to lodge a notice of appeal against the decision of this Honourable Court delivered on 26/08/2011 in Labour Revision No. 215 of 2010. The application is 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) and section 11 (1) of The Appellate Jurisdiction Act [CAP 141 R.E 2002] (herein The Appellate Jurisdiction Act).

The application emanates from the following background; on 01/11/1989 the applicant entered into employment contract with the

respondent. He was employed on the position of Shift supervisor. After working for twenty (20) years of service, on 05/08/2009 the applicant issued the respondent notice of resignation from the employment. His resignation notice was accepted and after its expiration on 04/09/2009 he resigned from the employment. Following his resignation, he claimed for his terminal benefits, repatriation expenses for himself, his family and personal effects from Dar es Salaam (place of recruitment) to Muleba Kagera (place of domicile) and night allowances. On 29/07/2010 the CMA found the applicant was entitled to repatriation expenses from Dar es Salaam to Muleba-Kagera at the tune of Tshs 2,610,310/= and subsistence allowances as per his salary's scale. Aggrieved by the CMA's decision the respondent appealed to this Court and his application was allowed. Consequently, the CMA's award was set aside.

Being dissatisfied by this court's decision the applicant filed the notice of appeal to the court of appeal, however, his appeal was struck out for being filed out of time. From such background the applicant has filed the present application urging the court to extend time within which to file notice of appeal.

At the hearing, the applicant appeared in person, unrepresented whereas the respondent enjoyed the services of Miriam Bachuba and Ms. Irene Ruchaki Learned Counsels from the law firm, IMMMA Advocates. The matter proceeded orally.

When the applicant was afforded with an opportunity to argue in support of the application, he stated that, he had no more submission other than what is contained in his affidavit.

In his affidavit, the applicant's reason for the delay is provided from paragraph 8 to 13 where he averred that, he is a lay person facing a lot of preliminary objections which took a lot of time before filing a Memorandum of Appeal and as a result he was delayed. He testified that, on 06/01/2016 he lodged an appeal in the Court of Appeal of Tanzania registered as Civil Appeal No. 02 of 2016, he also stated that when the appeal was called for hearing the Court suo motto requested the parties to address the propriety of the notice and the same was found to be lodged out of time, consequently the appeal was struck out.

The applicant testified further that, the delay of filing the requisite notice of appeal was not by reason of negligence but due to

act of God as the fundamental change of circumstances (rebus sic stantibus). He stated that, he became seriously sick over three years, hence he failed to file notice of appeal within time, he attached medical documents and prayed for the same to form part of his evidence (annexture ALN 2). The applicant also alleged that, he is a poor person who lives within the hand to mouth economy thus, he failed to hire an Advocate for legal assistance to access justice within time. He therefore prayed for the application to be granted.

Responding to the application, Ms. Miriam Bachuba adopted the respondent's counter affidavit to form part of her submission. She submitted that, the applicant prays for the extension of time against the court decision delivered on 26/08/2011. It was stated that, the applicant filed the notice of appeal on 12/12/2014 at the Court of appeal where on 18/06/2019 it was decided that he delayed for 3 years and four months.

It was submitted that, the present application was filed on 02/08/2019 which was one month and fifteen days and, the applicant has failed to account for the days he delayed to file the intended application. It was argued that, it is an established principle that the applicant has to account for each day of the delay as stated in the

case of **Wambele Mtumwa Shamte V. Mohamed Hamis**, Civ. Ref. No. 08 of 2016, CAT at DSM (unreported).

It was also submitted that, the other reason advanced for the delay is that the applicant was sick, but when glanced on the supporting documents that is hospital documents they show that they are of 2019. It was added that, the applicant caused more delay as he went to the Court of appeal as shown in annexure AL1. She therefore prayed for the application to be dismissed.

In rejoinder the applicant urged the court to allow the application. He strongly submitted that, he was sick as evidenced in his hospital documents. He added that, he delayed to file this application because he could not obtain copy of proceedings of this Court as well as the CMA.

After considering the parties submission and court records, I find the issue for determination is, whether the applicant adduced sufficient reasons for the delay to file notice of appeal.

The Court of Appeal Rules, GN. 368 of 2009 (herein Court of Appeal Rules) requires a person aggrieved by the decision of the High Court to file notice of appeal in the High Court where the decision

was delivered. This is in accordance with Rule 83 of the relevant law which is to the following effect:-

*'83. (1) - Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.
(2) Every notice shall, subject to the provisions of Rules 91 and 93, be so lodged within thirty days of the date of the decision against which it is desired to appeal.'*

The power of this court to extend time within which to file notice of appeal to the Court of appeal is provided under section 11 (1) of the Appellate jurisdiction Act which provides as follows:-

'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, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of 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 the application has already expired.'

It is a trite law that a person seeking for extension of time must adduce sufficient or good cause. 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 Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005** Hon. 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.'

Also, in the case of **Tanzania Fish Processors Ltd. Vs. Christopher Luhangula**, Civil Appeal No. 161/1994, CAT at Mwanza

it was 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.'

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, the impugned decision was delivered on 26/08/2011. On 12/12/2014 the applicant filed his notice of appeal where the Court of Appeal found it to have been lodged out of time without leave of the Court. Consequently, the application was struck out for being incompetent. Now the applicant comes to this court to

seek for extension of time after his appeal have been struck out by the Court of appeal for being filed out of time. As stated in his affidavit the applicant's reason for the delay is that, he lodged Notice of Appeal on 12/12/2014 which was subsequently struck out for being filed out of time.

I have keenly gone through the records, as correctly stated at page 3 paragraph 3 of the Court of Appeal decision in this matter dated 18/06/2019, the notice of appeal was lodged three years and four months from the date of the impugned decision which was delivered on 12/12/2014. The record also reveals that the applicant knew his notice of appeal was lodged out of time but proceeded with the same without leave of the court. Therefore, in my observation the reason that the applicant delayed because he filed notice of appeal on 12/12/2014 is irrelevant and cannot stand in this court. In my view the applicant ought to have accounted for the delay from the date of the impugned decision to the date he filed the present application. This is also the position of the Court in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3

of 2007 (unreported), where 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.'

In the circumstances of this case, it is my view that, even if the court decides to act upon the applicant's reason that he delayed because he filed the notice of appeal on 12/12/2014, he ought to have accounted for the delay from the date of the impugned decision to the date he filed that notice. As stated above the delay was for almost three years and four months, however, no reasons have been stated in this court for that cause.

I have also taken into consideration of the applicant's reason of sickness. As correctly submitted by the respondent's Counsel the medical reports are of 2019 while the impugned decision was delivered on 2011. Therefore, it is my view that the reason of sickness cannot stand as well. In my observation a party who has delayed to file a certain application should first seek for extension of time but not reluctantly filing an application and come back for an extension of time after he failed. The applicant in this matter decided

to put a cart first before the horse, in the result the cart could not move an inch. In such circumstance he failed to use the opportunity he had to come to this court first for the order sought before rushing to the Court of Appeal.

It should also be noted that, litigations have to come to an end so as to release parties to engage themselves in productive activities but not wasting the same by attending court sessions. The contested decision in this matter was delivered on 26/08/2011 and to date the applicant is still seeking for a chance to challenge such decision. In my view this case has taken too long and should reach its conclusion. This court would have granted extension of time if there were sufficient and justifiable reasons for the delay. However, as discussed above no reasons have been advanced by the applicant to that effect.

In the result, I find the applicant has failed to advance good cause to justify extension of time to file notice of appeal as prayed. Hence, this application lacks merit and is dismissed accordingly.

It is so ordered.



I.D. Aboud

JUDGE

01/07/2021