

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DARES SALAAM**

**MISCELLANEOUS APPLICATION NO. 32 OF 2020**

**BETWEEN**

**LUCY KESSY..... APPLICANT**

**VERSUS**

**NATIONAL MICROFINANCE BANK PLC..... RESPONDENT**

**RULING**

*Date of Last Order: 21/06/2021*

*Date of Ruling: 25/06/2021*

**A. Msafiri, J.**

Lucy Kessy, the applicant herein filed this application under the provisions of Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), 11(a) & (b) 55 (1),(2) and 56(1),(2) of the Labour Court Rules, GN No. 106 of 2007 praying for Orders that:-

- 1. This court may be pleased to grant application for extension of time to file application for interpretation of decision of High Court of Tanzania, Labour Division in Application for Revision No.123 of 2015 before Hon Aboud, J, dated 30<sup>th</sup> October, 2015 between Lucy Kessy v. National Microfinance Bank PLC Ltd.*

*2. Any other relief(s) that this Honorable Court may deem fit and just to grant.*

The application is supported by the applicant's affidavit. Opposing the application, the respondent filed a counter affidavit sworn by Lilian Komwihangiro respondent's Principal Officer. At the hearing the applicant was represented by Ms. Caroline Assenga, Advocate, while Advocate Antipas Lakam was for the respondent.

In her submission, the applicant's counsel prayed to adopt the affidavit in support of the application to form part of her submission. She submitted that the application is out of time due to various grounds including technical delay. After the decision of the court in Rev.No. 123/2015, the respondent paid the applicant terminal dues plus the compensation of twelve (12) months salaries in lieu of reinstatement. The applicant was aggrieved with the payment, she thus filed Application of Execution No. 374/2015 which was struck out with leave to refile on 15<sup>th</sup> February, 2016 for being incompetent, with leave to refile. Thereafter she filed another Execution Application No. 132/2016, the same was struck out on 30<sup>th</sup> June, 2018.

Further, it was submitted for the applicant that, the decision in Rev. No. 123/2015 was uncertain as a result the applicant filed an application for interpretation of the High Court decision before Commission for Mediation and Arbitration (herein as CMA) in Dispute no. CMA/DSM/KIN/49/R.12/963, the same was struck out for want of jurisdiction. The applicant challenged the said ruling in Rev. no. 29/2017 where Hon. Wambura, J (as she then was) dismissed the application for lack of merit. Again the applicant filed another Miscellaneous Application No.133/2019 seeking extension of time to file application for interpretation of the decision in No.123 of 2015. The same was struck out on 30<sup>th</sup> August, 2019 for being incompetent hence this application.

In addition, counsel for the applicant stated that, the applicant was pursuing her matter without any sign of negligence, referring the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Appl. No. 3 of 2007. She submitted further that the applicant has sufficient cause to be granted extension of time and her delay was technical one. She cemented her point by citing the case of **Bharya Engineering Construction Co. Ltd v. Hamid Ahmed Nassor**, Civil Appl. No. 342/2017 where it was held that;

*'technical delay applies when an application seek extension of time after an application for which extension of time is sought is struck out by Court of law.'*

She thus prayed for the application to be granted.

In response the respondent's counsel argued that, the applicant has failed to meet the prerequisite for having an application for extension of time be granted by this court, referring the case of **Ratma vs. Cumarasamy & Others**, (1964) Vol. 3 All ER page 933 where it was held that;

*'for an application of extension of time to be granted, there should be sufficient reasons, applicant must account for all the period of delay and delay should be inordinate.'*

He avers that, the applicant has failed to adduce sufficient reason for the delay. In her affidavit, the applicant has just stated the history of her employment and a number of cases which were filed. The applicant have not accounted for as to what happened from the date of judgment, to 30<sup>th</sup> October, 2015, to the date of filing this application on 27<sup>th</sup> January, 2020. The applicant have failed to establish why she did not file an application for

Interpretation of the impugned judgment promptly and she opted to do so after five years. The applicant did not act promptly to pursue her right so she is not entitled to extension of time, referring the case of **Yazid Kassim Mbakileki v. CRDB (1996) Ltd Bukoba Branch & Another**, Civil Appl.No.412/04 of 2018 CAT. Further, counsel for the Respondent stated that, the applicant did not explain on what she was doing to clear 3 months by which she delayed to file an application.

Mr. Lakam further argued that, the applicant knew her grievances was on payment of compensation and its remedy was to file an application for calculation. But, she filed improper application. The fact that she was in court corridors without proper legal proceedings, does not entitle her to extension of time referring the case of **Jane Chabruma v. NMB PLC**, Misc. Appl. No. 12 of 2017. In addition, it was submitted for the respondent that, this application is frivolous as the applicant has specifically stated that she is aggrieved by payment of compensation and not the content of the decision dated 13<sup>th</sup> October, 2015 upon which the interpretation is sought. He thus prayed for dismissal of the application.

In rejoinder, the applicant's counsel reiterated her submissions in chief. She further stated that after the decision, she was waiting to be reinstated by the respondent. She filed application for execution which was within time as per the Law of Limitation Act which provides for 12 years' time, so she was on time and the court should not consider the three months delay. She thus insisted on the prayers in submission in chief.

Having considered the parties submissions, this case records and the applicable laws, the issue for determination before this court "*is whether the applicant had adduced sufficient reasons for the delay.*"

For the court to exercise its discretionary power of extending time, sufficient reasons for the delay must be adduced. This position is clearly prescribed under Rule 56 (1) of the Labour Court Rules, GN No. 106 of 2007, which provides:-

*'The court may, extend or abridge any period prescribed by these Rules on application and good cause shown, unless the Court is precluded from doing so by any written law.'*



In exercising such a discretion, court also has to consider some other circumstances of the particular case including time of the said delay, legal issues involved and diligence on the part of the applicant.

There is thread of authorities which have elaborated on what amounts to good cause, For instance in the case of **Attorney General V. Tanzania Ports Authority & another**, Civil Application No. 87 of 2016 which stated:-

*'Good cause includes whether the application has been brought promptly, in absence of any invalid explanation for the delay and negligence on the part of the applicant.'*

*[Emphasis added]*

In the matter at hand, the applicant's counsel submitted that the applicant acted diligently to pursue on the intended application. Her delay was technical as after the judgment dated 13<sup>th</sup> October, 2015, the applicant filed various applications for execution and for interpretation of the judgment before CMA and all proved futile on various grounds. All that time she was in court corridors seeking for her right. The respondent rebutted the applicant's contentions by arguing that, the applicant have

failed to adduce sufficient cause for her delay and she did not account on each day of her delay.

It is undoubted that the applicant filed multiple applications of execution which proved futile as they were struck out for being incompetent before the court. It is on record that the applicant found the order of the judgment in Rev.No. 123/2015 to be uncertain, regrettably instead of filing for application for interpretation of the same she wrongly filed before CMA where it was a wrong forum for interpretation of the court's judgment. Despite of the fact that CMA had dismissed the application for want of jurisdiction, the applicant challenged that CMA's decision without success. Under the circumstances, ignorance of law has never been an excuse for extension of time.

It is apparent that the applicant's delay is inordinate as from the date of the judgment to the date the applicant filed this application is almost 5 years lapse. The fact that the applicant was in court corridors filing improper applications does not suffice to the grant of the application for extension of time.



It is a trite law that, in application of extension of time the applicant had to account on each day of the delay as was held in the case of **Interchick Company Ltd v. Mwaitende Ahobokile**, Civil Appl. No. 218 of 2016.

The applicant had failed to account on each day of the delay from the date of the judgment, to the date when she filed the first application for extension of time to file application for interpretation which was struck out on 30<sup>th</sup> August, 2019. Again, as stated by the respondent's counsel the applicant have not accounted on each day of the delay from the date when her application was rejected on 29<sup>th</sup> October, 2019 as she alleged, to 27<sup>th</sup> January, 2020 the date of filing the present application. Lapses, in action or negligence on the part of the applicant does not constitute sufficient cause to grant an extension of time as was held in the cases of **Alison Xerox Sila Vs. Tanzania Harbours Authority**, Misc. Civil Ref. No. 14 of 1998.

Also in the case of **Insignia Ltd v. Commissioner General TRA**, Civil Appl. No. 2/2007 it was held that, the applicant has only got to show that the delay has not been caused by his conduct but due to reasons

beyond his control. But in the present application, the applicant have failed to do so. Under the circumstances, I hereby dismiss the application for want of merit.

It is so ordered.



A. Msafiri

**JUDGE**

25/06/2021