

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISC. APPLICATION NO. 425 OF 2020

BETWEEN

JUDICATE RUMISHAEL SHOO & 64 OTHERS APPLICANTS

VERSUS

THE GUARDIAN LTD. RESPONDENT

RULING

S.M. MAGHIMBI, J:

In this application the applicants, duly represented by Mr. Barnaba Luguwa, learned advocate, are moving the court to extend time within which they may file a notice of appeal in order to lodge their appeal at the Court of Appeal. The intended appeal is against the decision of this court in Labor Revision No. 80/2010 dated 01st day of April, 2011. The application is lodged under the provisions of Section 11(1) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019; Rule 56(1) and 55(1) of the Labor Court Rules, 2007 and Section 94(1) of the Employment and Labor Relations Act, Cap. 366 R.E 2019.

The Chamber Application was supported by an affidavit of the 1st applicant, Judicate Rumishael Shoo dated 31st August, 2020 which the applicants prayed to form part of evidence to support this application along with other reasons adduced in the written submissions. On their part, the respondents, duly represented by Mr. Emanuel Matondo, learned advocate,

strongly opposed the application by filing a counter affidavit. Their ground of opposition was that the applicants have not shown good cause for the delay.

The reason for the delay as narrated by the applicants, in both their affidavit and Mr. Luguwa's written submissions in support of the application, were that the applicants had timely lodged both notice of appeal and leave to appeal to the Court of Appeal which was granted. Further that they eventually lodged a Civil Appeal No. 01/2016 before the Court of Appeal. The said appeal was withdrawn on the 11th day of June, 2019 hence this application for extension of time. They further attributed the delay from the time of withdrawal of the appeal to the time of filing this application, to lack of funds to hire an advocate to represent them.

In reply, Mr. Matondo submitted that in this application, the million question dollar is whether seeking or finding for the legal advice from a lawyer has been a sufficient reason to warrant the grant of extension of time? His answer was in the negative, that the applicants have not adduced sufficient reasons for the delay. He the submitted that it is trite law that ignorance of the law is not an excuse, which include seeking for advice, negligence or finding a lawyer. He supported his submissions by citing the case of **Omari R. Ibrahim V Ndege Commercial Services Ltd** Civil Application No 83/01 of 2020 (Unreported). That in this case the Applicant delay was due to spent time of consulting various lawyers for being layman, hence it was held that:

"it should be stated once that, neither ignorance of the law no counsel's mistakes constitute good cause for extension of time"

That in the cited case, the Court of Appeal rejected to grant the application for extension of time basing on the above ground. That the Applicants have failed to show good cause to warrant the grant of extension of time. He also challenged the submission made by the Applicants on the ground that the Appeal was withdrawn on 11th day of June, 2019, it took the Appellant more than a year and three months to bring the current application which was filed on 16th day of September, 2020 after a lapse of four hundred fifty days, to initiate the current application. That they have failed or simply cared not to state what they were doing in even in a single day out of the four hundred fifty days as per the requirement of the law. He supported his submissions by citing the case of **Bruno Wenceslaus Nyalifa V The Permanent Secretary Ministry Of Home Affairs & The Honourable Attorney General Civil Appeal No 82 of 2017** at page 10 quoting the case of **Lyamuya Construction Company Ltd V Board Of Registered Young Women's Christian Association Of Tanzania Civil Application No. 2 of 2010** (Unreported) where the Court emphasized the importance of stating each day of delay. His prayer was that the application be dismissed.

Having considered the records of this application, the parties submissions for and against the application and the background that has led to this current application, my work here is only to determine the period of delay between the 11th June, 2019 when the Appeal was withdrawn before the Court of Appeal, to the 16th September, 2020 when this application was

lodged in this court. This is because as narrated and without any dispute, the applicants had already lodged an appeal to the Court of Appeal, Civil Appeal No. 01/2016 which was later on withdrawn on the 11th June, 2019.

The reason for the delay put forth by Mr. Luguwa is that the applicants preferred the appeal and all relevant procedural requirements on time and hence time ran against them when they were pursuing their appeal at the Court of Appeal. In the statement of legal issues, the applicant stated that the delay was due to the fact that the applicants have been pursuing other proceedings to the Court of Appeal of Tanzania, second is that the impugned decision is unfair as the trial judge did not take into consideration that the applicant proved that the procedure of retrenchment was violated and that the delay is not inordinate.

However, in both their affidavit and the written submissions in support of the application, the applicants never explained the delay to lodge the application between the 11th June, 2019 and 16th September, 2020 which is an unexplained period of one year and three months! The defence they put forward is that they had previously lodged all the necessary application on time a fact which nobody is disputing, but the applicant's condonation period is not from the date when the decision of this Court in the impugned revision was delivered, because that is well explained. Mr. Luguwa also adduced another reason that the applicants did not have funds to engage an advocate arguing that they have reasonable ground for the time to be extended so they can file a fresh notice of appeal as the previous one expired on withdrawal of the appeal. However, the reason for lack of funds

to engage an advocate cannot be taken as a good ground given the length of time that it took to lodge the current application.

In this Court, there are no hard and fast rules that a party must be represented by an advocate. There are other options available including personal representation, acquiring free legal services from institutions which provide so or parties appearing in person. The applicants have not explained if they opted for the alternative representation and failed, which is a failure to justify the delay of more than one year to lodge the current application

Given the fact that the period of delay that the applicants were duty bound to explain was the one year and three months (between withdrawal of appeal at the Court of Appeal and the lodging of this application) which by all means have not been explained to the satisfaction of this court. The applicants have failed to move this court to exercise its jurisdiction to extend time. Consequently, this application is hereby dismissed.

Dated at Dar-es-salaam this 27th day of August, 2021.




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S.M. MAGHIMBI.
JUDGE.