

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR- ES SALAAM

MISC. APPLICATION NO. 241 OF 2018

GANJAGA LAMECK KAFWIMBA.....APPLICANT

VERSUS

SCANIA TANZANIA LIMITED.....RESPONDENT

RULING

27th & 27th September 2021

Rwizile J.

This is an application for extension of time. The applicant seeks this court to grant him time to file proper notice of appeal. It is preferred under rule 24, 55(1) and (2) as well as rule 56(1) of the Labour Court Rules, GN No. 106 of 2007. As it is usually the case, the chamber application is supported by the affidavit of the applicant stating reasons for the delay.

It has been recollected that the applicant has been locked in this dispute with his former employer for over 15 years. Brief facts leading to this application are; the applicant is the former employee of the respondent;

he was employed as Chief Accountant way back 1990. On 14th December, 1995 he was terminated from employment service by way of early retirement.

He contested the decision of his termination to the defunct Industrial Court of Tanzania (ICT). In its decision the ICT ordered the applicant to be paid six months' salary in lieu of notice, repatriation allowance to his place of domicile Majita-Musoma.

Being dissatisfied with such decision applicant appealed to the High Court. The High Court struck out the appeal on 7th August, 2003. Hastily, he instituted an execution case No. 222 of 2003 and attached the respondent's account and by an absolute garnishee order where he was paid 3,892,080/= to satisfy the ICT decision.

After having pocketed the amount, he instituted another suit to the Resident Magistrate Court at Kisutu claiming among others payment of subsistence allowance. An appeal was preferred to the High Court where the Court quashed the proceedings and decision on the ground that the trial Court lacked jurisdiction and directed any aggrieved party to refer his complaint to the court of competent jurisdiction.

The applicant through the Labour Commissioner filed a referral to the CMA claiming payment of subsistence allowance and interest thereto from the date of termination to the date he was paid the repatriation allowance.

The CMA entertained the referral and dismissed it on the ground that the claim of daily substance allowance and other claims raised are res-judicata and therefore not sustainable.

He then filed Labour Revision No. 172 of 2015, which he lost. His effort did not end there, he filed a notice of appeal to the Court of Appeal before this court on 9th May 2016. He has averred in his affidavit that the same withdrawn at the Court of Appeal on 5th September 2016, because it was defective for lacking the signature of the Deputy Registrar of this court.

He then came back by filing Misc. Application No. 414 of 2016. It was struck out with leave to refile on 24th March 2017 (Mipawa J as he then was). Thereafter, he filed another application, Misc. No. 125 of 2017, this one too, underwent the similar fate. It was struck out for being incompetent and improperly filed before this court, (Nyerere J, as she

then was) on 9th May 2018. This application was then filed. It was also dismissed for want prosecution under Rule 32 (5) of Labour Court Rules (Wambura J, as she then was) on 11th March 2019. The applicant was resilient and filed Misc. Application No. 173 of 2019, applying for restoration. The same was granted on 14th October 2020 (Mwipopo J).

In all previous applications, the applicant fought the battle by himself except the application for restoration where he enjoyed services of Anneth Nyang'oko Makunja learned advocate, who also appeared today for the same purpose. The respondent has been consistently represented by Kariwa & Co. Advocates, where Mr. Frank Kilian, who appeared today comes from.

Arguing this application, Nyang'oko was brief. Apart from tracing the history of applications that were filed by the applicant in person, she submitted that the applicant filed the notice, but it was not his fault that it was not signed by the Deputy Registrar of this court. According to her, failure to sign the same was not the applicant's fault. She asked this court to find no fault in the actions of the applicant by guided by the decision in the case of **Corporal Edward Augustine Kambi vs The Principal Secretary Ministry of Defence and National Service**

and another, Civil Application No. 62 of 2011. She submitted, that since the applicant was all the time in court then he has good reasons for delay, for if the Notice could have been duly signed by the DR, he was just in time.

Mr. Kilian was of the view that no sufficient cause has been shown to warrant extension of time. On his party, the applicant has demonstrated levels of negligence by filing applications that are wanting in substance. He argued that the applicant failed even to account for 28 days, he delayed from the time application No 125 of 2017 was struck out to when he filed this application. He asked this court to refer to the case of **Oscar Mbwambo and Another vs MS, Tanga Cement**, Misc. Labour Application No. 12 of 2014 LCCD, Part 2 at page 14

MS Nyang'oko had nothing to rejoin save reiterating what was submitted in chief and added that the decision to dismiss the application was attached to prove how it was done.

In essence, any application for extension of time, as stated in the case of **Corporal Edward Augustine Kambi (supra)** is an exercise of the discretion of the Court, which however must be invoked with a judicious

mind upon being satisfied that good cause has been demonstrated by the applicant.

This is also supported by the case of **Oscar Mbwambo and Another** (supra) where, the applicant has to account for all days of the delay.

It is trite law that in considering whether or not to grant such extension of time, courts take into account these factors:-

- (i) the length of the delay;
- (ii) the reason for the delay: was the delay caused or contributed by the dilatory conduct of the applicant?;
- (iii) whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision sought to be challenged; and/or
- (iv) the degree of prejudice to the opposite party if the application is granted.

See, for instance, **Shanti v. Hindocha & Others** [1973] E.A. 207, **Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] T.L.R. 185, **VIP Engineering and Marketing LTD & Two Others v. Citibank Tanzania Ltd,**

Consolidated Civil References No. 6,7, & 8 of 2006, **Eliya Anderson v.R.**, Criminal Application No. 2 of 2013 and **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Civil Application No. 4 of 2009 (all unreported).

Applying, the principals propounded in the binding authorities above, I am bound to trace the history of the case. It has been shown that the applicant filed the notice in time. There is no dispute that it was withdrawn at the Court of Appeal. The reason as to why it was withdrawn is that, it was defective for having no endorsement of the Registrar of this court. Para 6 of the affidavit supporting the application is good to that effect.

It is also apparent that the same notice was filed before this court on 9th May 2016 and appended with the stamp of this court. But it was not, as claimed, signed by the Registrar. The proceedings that followed therefore after were unfortunate. The respondent has submitted that the same amount to negligence on party of the applicant.

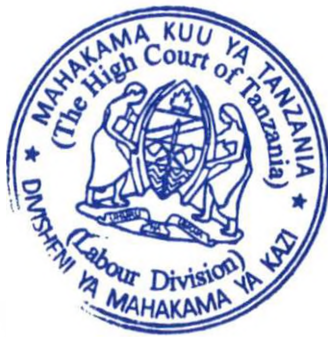
If we are to deal with what happened in their true colours, in actual fact, the applicant was not satisfied by the decision of both CMA and this Court, he was quick in taking action. If the same notice were duly signed by the Registrar, the rest of what happened would not have occurred. If this court excuses the Registrar of this court for sending an improper record to the court of appeal, which also passed through the same process with the errors not noticed until it appeared before their lordships justices of appeal, in similar force this court has to excuse the applicant for what happened in filing the applications that were with minor defects that led to being struck out.

I am aware that not being learned in law has never been an excuse for filing an improper application, but it is the duty of the court, to scrutinize the pleadings, especially those filed by lay persons to make sure errors that can be rectified before the case is admitted, are seen and rectified by the parties.

There is no negligence on party of the applicant and therefore all this delay cannot be attributed to him personally without blaming our legal system that has taken pleasure in technicalities that are a hindrance to

good ends of justice. This being a labour matter, where by the letter and spirit of labour legislations, equity is the primary aim, I find merit in the application.

It is hereby granted. The applicant is granted 14 days within which to file a proper notice of appeal. No order as to costs.



A handwritten signature in blue ink, appearing to read 'A.K. Rwizile', written over a horizontal line.

A.K.Rwizile

JUDGE

27.09.2021