



The application arises out of the following context, sometimes back in 2007, the applicant alleged that on 2014 the respondent breached terms, conditions, letters and spirit of the Collective Bargaining Agreement (CBA) and Organizational structure, 2007 where arrears in remuneration were to be adjusted and paid in full to applicant's trade union members. That the respondent unilaterally and without good cause refused to pay the remuneration arrears as agreed. Aggrieved by the respondent's decision, the applicant referred the matter to the Commission for Mediation and Arbitration (CMA). At the CMA the mediation did not succeed therefore on 15/12/2014, a Certificate of non settlement was issued. Immediately thereafter, on 16/12/2014 the applicant referred the matter to arbitration at the CMA. The CMA dismissed the matter for lack of jurisdiction. The applicant then knocked the doors of this court with Miscellaneous Application Labour No. 96 of 2015 praying for extension of time to refer the matter to arbitration in this court. His application was granted, he then filed Misc. Application No. 255 of 2015 which was later on struck out for non citation of the enabling provision of the law. For the interest of justice, the applicant was granted five (5) days leave to refile proper application.

Pursuant to the court's order, the applicant filed Misc. Appl. No. 72 of 2017 which was also struck out for being incompetent. Again, the applicant was granted three (3) days leave to refile a proper application, she complied to the court's order and refiled Misc. Appl. No. 282 of 2017 which was withdrawn upon prayer of the applicant's Counsel. Leave to refile the application was again granted for ten days (10) whereby a subsequent Misc. Appl. No. 707 of 2018 was filed and eventually struck out on 28/02/2020 for being incompetent, in the relevant application the court did not grant leave for the applicant to refile her application, hence this application urging the court to grant extension of time to file his main application. The respondent opposed the grant of the orders sought by filing a counter affidavit.

The disposal of this matter was by way of written submissions. Mr. Deogratus Mwarabu, Learned Counsel appeared for the applicant, while Mr. Benson Hoseah, Learned State Attorney was for the respondent.

Arguing the merits of the application, Mr. Mwarabu submitted that it is an established position in our laws that factors that the court has to take into account in granting condonation includes the length of the delay, reasons for the delay, the degree of prejudice to the respondent and some instances chances of success in the intended matter. That in

this case, the applicant adduced good cause for the delay as she is applying for condonation because the previous application, Misc. Appl. No. 707 of 2018 was struck out by this court on technicality. He argued that technical delay is a sufficient reason to grant extension of time, citing the decision of the Court of Appeal in the case of **YARA Tanzania Limited v. DB Shapriya & Co. Limited, Civ. Appl. No. 498/16 of 2016** to support his argument.

Mr. Mwarabu submitted further that the applicant has accounted for the delay in prosecuting this matter since it was instituted for the first time. That she had complied with the law and time granted by this court and that since this court had delivered its decision on 28/02/2020, the applicant has been tirelessly pursuing its interest in order for the main suit to be heard on merits. That after the court delivered its decision on 28/02/2020, the applicant's management communicated the decision to its Union members who are scattered all over the country and that it took a long time to consult members due to social distancing guidelines prevailing in the country in this period of COVID-19 pandemic. He therefore urged the court to grant extension of time so as his members could be afforded their rights.

Responding to the application, Mr. Hoseah submitted that the court's power to grant extension of time has to be exercised sparingly and there must be some material that will enable the court to grant such extension. To support his submission, he referred the court to the case of **Kalunga and Company Advocates v. NBC Ltd [2006] TLR 235** whereby this position was held. His argument was that the applicant did not disclose any good reason that would warrant the court to grant the application at hand. That on 11/12/2018, the applicant was granted 10 days leave to refile his application, he then filed Misc. Application No. 707 of 2018 which was struck out on 28/02/2020. He argued that the applicant was supposed to account on each day of the delay from 29/02/2020 to the date of filing the present application on 12/06/2020.

On the allegation that the applicant was communicating the decision with its members, Mr. Hoseah submitted that an extract of the resolution (annexture TEWUTA-VII) does not entail any kind of communication from the applicant to its members and that the relevant document does not have proof that it is a final communication received by the applicant from its members. He argued that the annexture TEWUTA-VII is only a deliberation and resolution by the applicant to file the present application.

Mr. Hoseah submitted further that whoever is applying for extension of time has to account for each day of the delay. He pointed out that this application, there are 105 days lapsed and the applicant did not account on the delay. He supported his submissions by citing the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Appl. No. 02 of 2010**, CAT, Arusha (unreported). He concluded that the delay in this application is inordinate thus the court should not grant the extension of time prayed and prayed for the dismissal of the application.

In rejoinder the Mr. Mwarabu strongly disputed Mr. Hoseah's contention that Misc. Appl. No. 707 of 2018 was filed more than a year. He instead submitted that it was in Misc. Appl. No. 282 of 2017 where the applicant was granted leave to refile Misc. Appl. No. 707 of 2018 and he filed the same timely. That the respondent appeared in both applications and that he is now misleading the court to cause miscarriage of justice and unnecessary delay on the allegation that Misc. Appl. No. 707 of 2018 was filed out of time. He then reiterated his submission in chief arguing that he has accounted for the delay to warrant this court to grant the extension of time prayed.

Having considered the parties submission and court records, it is now for me to see whether the applicant has adduced sufficient reasons to grant the prayers sought in this application. What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal case of **Valerie McGivern v. Salim Fakhrudin Dalal**, Civ. Appl. No. 11 of 2015, Tanga where Mjasiri J held that

*'The law is settled. This court has held in a number of cases that no particular reason or reasons have been set out as standard sufficient reasons. What constituted good cause cannot therefore be laid down by any hard and fast rule. The term good cause is relative one and is dependant upon the circumstances of each individual case.'*

Also in the case of **Lyamuya Construction (supra)** cited by Mr. Hosea, some factors to take into consideration in the grant of the application like the one at hand were listed to include an account for all the period of delay, the delay should not be inordinate and that the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. In the instant case, the applicant is praying for extension of time to file main application relating to implementation of Collective Bargaining

Agreement (CMA) after the mediation proceeding failed at the CMA on 15/12/2014 as reflected in the Mediator's Certificate of Settlement/Non-Settlement. As narrated in the dispute background, the applicant filed several applications to this court and the current application was filed after the struck out of Misc. Appl. No. 707 of 2018, an application which was struck out on 28/02/2020 while the applicant filed the present application on 12/06/2020, approximately four (4) months later.

I have noted the Mr. Hosea's submission that the applicant delayed for almost a year. As rightly submitted by Mr. Mwarabu, Mr. Hosea is misleading the court because the record shows that both parties appeared in the record of Misc. Appl. No. 282 of 2017, therefore it is irrational and illogical for Mr. Hosea to deny the existence of such application.

Back to the applicant's reason for the delay, Mr. Mwarabu alleged that he delayed to file the present application because he was waiting for his members' resolution and attached the member's resolution (annexture TEWUTA VII). In the circumstances of this case it is my view that the applicant has accounted for the delay from 15/12/2014 when the mediation failed to 28/02/2020 when his last application to the court was struck out. Indeed the case was in court therefore it was totally a



technical delay. However, the applicant has failed to account for the delay from 28/02/2020 when the last application was struck out to 12/06/2020 when he filed the present application. This matter emanates from a long period of time, the factor which should have been taken into consideration by the applicant's members and made a resolution earlier other than staying reluctant for four months.

It is a trite law that delay of even a single day has to be accounted for otherwise there will be no justification in setting time limit. (see the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007**) (unreported). As the record reveals above, the court had been lenient to the applicant and granted him several chances to file proper applications before the court, to the contrary, the applicant kept on filing incompetent applications which delayed the matter to be finalized. Emphasis should be made to the need for litigations to come to an end. See the holding in the case of **Tanzania Fish Processors Ltd Vs Christopher Luhangula, Civil Appeal No 161/1994**, CAT at Mwanza where 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'*

At this point, I would have proceeded to dismiss the application for want of merits, but today this will not be the case for the reasons I will elaborate. As the history goes, the intended application is on the implementation of CBA that was entered between the parties to this case. The agreement led to an adjustment in the organizational structure and now, pursuant to the terms of the agreement, the applicant claim arrears of payment in what they termed as the breach of the agreement. The question is whether the delay in four months should defeat the wider context of having the applicants' right in the alleged collective bargaining realized. If the contents of the agreement were actually entered into, would we deny the applicant a chance to have them implemented? Would the agreement remain unimplemented forever? It is in the spirit that I hesitated to proceed and dismiss the application.


However, before I pen down, I must warn the applicants to be careful in filing the intended application because there has been a series of applications which were struck out for being incompetent. Should the same thing happen this time, the court would conclude that the

applicants are abusing court processes and are not serious in pursuing their rights.

Having made the above comments and findings, I proceed allow this application by extending time for the applicant to refer the intended application to this court. The intended application shall be filed in court within fourteen (14) days from the date of this ruling.

Dated at Dar-es-salaam this 08<sup>th</sup> day of September, 2021.



  
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**S.M. MAGHIMBI.**  
**JUDGE.**