

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LABOUR REVISION NO. 2 OF 2021

(C/O Labour Dispute No. CMA/RK/82/2018)

PARADISE BUSINESS COLLEGE APPLICANT

VERSUS

RUTH F. SAMILA RESPONDENT

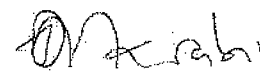
RULING

Date: 20/10/2021 & 04/11/2021

Nkwabi, J.:

No doubt, both parties in this application for extension of time within which to lodge an application for labour revision are aware of the decision in **Tanzania Tailors v. Keshvaji Lalji [1970] H.C.D. no. 236** Makame, Ag. J., as he then was, in which the applicant sought leave to appeal to the Court of Appeal for East Africa, out of time, from the judgment of the High Court in which it was held:

(1) "Before an application like this can be allowed it has to be shown that there was a sufficient reason for failing to do what ought reasonably to have been done. Prudence and vigilance should have

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alerted the learned advocate, and ordinary diligence should have made him seek confirmation from the registry officer that the Judge had indeed changed his mind. ...As it is, time having expired, the successful party must have assumed that the fight was over, and unless sufficient reason is shown, which it has not been, it would be unfair to dislodge him from his seat of victory."

It is thus, every party argued forcefully on their stance, the applicant that he has assigned sufficient reasons for this court to be justified to use its discretionary power to grant an extension of time. The respondent too thus, is adamant that the applicant has failed to assign sufficient reason(s) for this court to use its discretionary power to grant the reliefs as prayed.

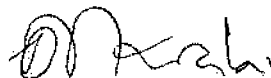
The applicant supported his application with the affidavit duly sworn by Mr. Peter Kamyalile, learned advocate, averring that the applicant was aggrieved with the award of CMA which is the basis of this application, she filed an application for revision number 9/2019 lodged in time but was struck out on 31/08/2020 for technicality. She got a copy on 07/09/2020.

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From 8/9/2020, the new manager Mr. Yahaya Zagalo was very sick and admitted at Sumbawanga Referral Hospital, hence delay in lodgment was not attributed to negligence rather technical delay from 14/08/2019 to 31/08/2020.

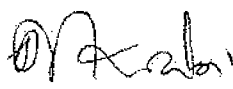
That, on 30/12/2020 the applicant filed application for extension of time and revision online but the application was filed in the High Court of Tanzania (Labour Division) at Sumbawanga was not seen at the registry of Sumbawanga hence this application delayed being filed from 30/12/2020 up to 18/02/2021 as a result of a technical delay of the system of online filing.

Rejecting the application, would stifle his case and suffer injustice; he averred. The legal issues which make her revision are whether the respondent was unfairly terminated and whether the amount of T.shs 8,949,324 awarded was justifiable in law and proved. The applicant however, did not attach the copy of the award he intends to challenge in revision if extension of time to file labour revision is granted.



In counter-affidavit deponed by the respondent's learned advocate, Mr. Deogratius P. Sanga, firmly stated that the ruling was available for collection on the delivery date. The delay is on pure applicant's gross negligence, he added. That the applicant is an institution which operates under board of management, operation could proceed in the absence of Zagaro. That it is the respondent who shall suffer and is still suffering and would proceed suffering if the application is granted. The applicant is using the court as a delaying tactic to delay her right, Mr. Sanga stressed. He resisted too the alleged legal issues to warrant revision.

In his submission, the counsel for applicant set forth the major reasons for the extension of time being, technical delay citing **Fortunatus Mahsa v William Shija & Another [1997] TLR 154 (CA)**, illness relying on **Leonard Magesa v. M/S Olam (T) Ltd Civil Application No.11 of 2015 (CA)** and denying the applicant extension will stifle his case citing **Mobramagold Corporation Ltdd v Minister for Energy and Minerals and the Attorney General, and East African Goldmines Ltd as Intervener, [1998] TLR 425 (HC)**. Mr. Kamyalile, finalized his submission on the extension of time for filing revision, that they have adduced sufficient

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reason in compliance with **Michael Lesani Kweka v John Eliafye [1997]**

TLR 152.

He then went on to submit on the revision reiterating the averment in the affidavit.

The counsel for the respondent countered the submission of the counsel for the applicant saying the decision of a single Justice of Appeal in **Fortunatus Masha v William Shija & Another [1997] TLR 154 (CA)**, was reversed in a reference by the decision of three Justices of Appeal and the same is reported as **William Shija & Another v Fortunatus Masha [1997] TLR 213 (CA)**, where it was said a technical delay is not excusable, but it amounts to negligence which is not good cause for extension of time. Negligence is not excusable and cannot stand as sufficient cause for extension of time, he insisted placing reliance on **Umoja Garage v National Bank of Commerce, 1997] TLR 109.**

Responding to the illness of Yahaya, he said cannot be good cause as the applicant is an entity (institution) with more than one personnel in managing

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its conduct, hence the case of **Magesa** (supra) is distinguishable as in that case, the applicant is an individual (human being).

Further, the respondent argued that the applicant has failed to account for 50 days from 29th December, 2020 when Yahaya was discharged to 23rd February 2021 when this application was filed. On this argument, the court was referred to **Juma Shomari v Kambwere Mambo Civil Application No 330/17/2020** (CAT).

As to stifling the applicant's case, the same is disputed by the respondent just like the reasons for the revision.

The respondent too insisted the applicant was negligent for not making follow-up after submitting the application in a wrong registry. In the joinder submission, the applicant stood to his guns.

I will start discussing the 1st argument by the counsel for the applicant about technical delay where he relied on **Fortunatus Masha v William Shija & Another [1997] TLR 154** (CA). I am of the view that the alleged technical

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delay merely amounts to gross negligence on the party of the applicant and her advocate as rightly argued by the counsel for the respondent. The decision of a single Justice of Appeal, I am afraid, cannot upset a decision of three Justices of Appeal. This justification for extension of time is wanting in merit. Even submitting a document in an account (registry) without making follow-up is nothing but sheer negligence which does not amount to good cause.

Illness of Yahaya and backing it by citing **Leonard Magesa v. M/S Olam (T) Ltd Civil Application No.11 of 2015** (CA) does not assist the applicant as the case of **Leonard Magesa** (supra) is distinguishable as in the present application, the applicant is an institution, while in the former the applicant was an individual human being. Steps could have been taken by other officer(s) in the institution.

Next, I consider the claim that denying the applicant extension will stifle his case citing **Mobramagold Corporation Ltdd v Minister for Energy and Minerals and the Attorney General, and East African Goldmines Ltd as Intervener, [1998] TLR 425** (HC) to bolster the argument. This

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argument too has no basis considering the authority I have cited in **Tanzania Tailors v. Keshvaji Lalji.**

It is trite law that one has to account for each day of the delay, See **Civil Application No. 218 of 2016 Interchik Company Limited v Mwaitenda Ahobokile Michael** (unreported) delivered by Hon. Ndika, Justice of Appeal, where he had these to say at page 12:

It is this Court's firmly entrenched position that any applicant seeking extension of time under Rule 10 of the Rules is required to account for each day of delay.

As it has turned out in this application, the applicant has miserably failed to account for each day of the delay.

Apparently, in this application, the applicant failed to attach the copy of the award of the Commission for Mediation and Arbitration hence offending the authority in **Regional Manager TANROAD Kagera v Ruaha Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM (Unreported):**

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the


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circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."

Litigation, definitely, has to come to an end, see **Stephen Masato Wasira v Joseph Sindi Warioba and the Attorney General [1999] TLR 334.**

No party has to be allowed to sacrifice that at the altar of purported technical delay. Advocates of parties as well as courts are enjoined to act competently and efficiently, see **Musa Ramadhani Makumbi & 4 others v Republic, Criminal Appeal No. 199/2010 (CAT)** (unreported) at page 12. A decree holder ought to enjoy the fruit(s) of the award or decree, lest they be frustrated and the decree/award of court of law rendered impotent.

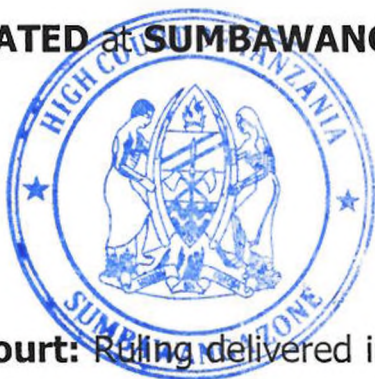
Neither good cause has been assigned by the applicant for this court to grant extension of time within which to file an application for revision of the award of CMA nor material has been advanced to this court for that matter and hence, it is difficult for me to decide that sufficient cause has been established. The applicant too has failed to account for each day of the delay.

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Consequently, the application is dismissed with no order as to costs as this is a labour matter.

It is so ordered.

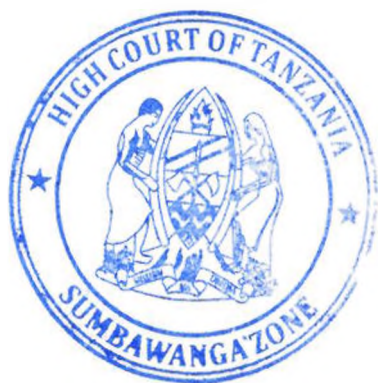
DATED at **SUMBAWANGA** this 4th day of November, 2021



J. F. Nkwabi,

JUDGE

Court: Ruling delivered in chambers this 4th day of November, 2021 in the absence of the applicant but in the presence of Mr. Musa Lwila, learned counsel, for the Respondent via video conference.



J.F. Nkwabi

JUDGE