

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**Misc. APPLICATION NO. 471 OF 2020**

(Originating from Application No 44 of 2016)

**NOKIA SOLUTIONS & NETWORK (T) LTD..... APPLICANT**

**VERSUS**

**SURENDER SURANA..... RESPONDENT**

-----  
**EXPARTE RULING**

4<sup>th</sup> & 26<sup>th</sup> November 2021

**Rwizile J.**

Before this court is an application for extension of time. It has been filed by the chamber summons supported by an affidavit of Mr. Peter Ngowi learned advocate who also has been representing the applicant. It has been gathered from the facts of the dispute that the applicant has been in employer-employee relationship since 1998, that commenced at the Nokia group headquarters in Finland. He has worked in a number of countries and finally landed in Tanzania for the same mission in 2013. Having worked in Tanzania since then to 2015, his employment was terminated.

He felt, it was unfair and so successfully coaxed the commission for mediation and arbitration (the commission), to so find. He was paid terminal dues. It was in 28<sup>th</sup> January 2016.

The applicant was aggrieved and filed in the same year, an application for revision slated as No. 44 of 2016. Unfortunately, it was struck out for what it has been referred in his affidavit as technicalities. It first happened on 11<sup>th</sup> May 2016. According to his affidavit Mr. Peter has filed several other applications for extension of time but all facing the similar fate. Lastly, it was struck out by this court on 5<sup>th</sup> October 2020 and hence this application.

The grounds for this application are predicated at paragraph 4 of his affidavit coached as follows;

- i. Whether total confusion due to sickness and later on death of the father of the applicant's counsel and misrepresentation made by Counsel Elibariki Akyoo to the applicant's counsel as envisaged under paragraph 3.7 to 3.11 of the affidavit supporting the application amounted to sufficient ground for the delay.
- ii. Whether the act of striking out of the previous applications four times by this honourable Court due to

technicality amounted to dilatory conduct on part of the applicant.

- iii. Whether the discovery of illegality/illegal procurement of the award which was issued by the CMA in favour of the respondent that alone amounted to sufficient ground four extension of time.
- iv. That the honourable Arbitrator immensely erred in law and in fact after she has failed to reasonably assess the applicant evidence in comparison with the respondent's evidence and erroneously concluded that the applicant did not initiate discussion of renewing the respondent's contract while as per the contract it was the option of the applicant and the respondent (both parties) to end the above contract by compensation.
- v. That the honourable Arbitrator erred in law and in fact by holding that there was expectation of renewal due to the fact that the applicant previously renewed while the said contract has never been renewed.
- vi. That the honourable Arbitrator erred in facts and in law by holding that the applicant's fault was caused by the

fact that she advertised the respondent position one (1) day before the expiration of such contract although in his testimony the respondent admitted his work permit to have been expired, 1 month before the date of expiration of the contract.

- vii. That the honourable Arbitrator erred in law and in facts by awarding the respondent compensation of 24 months salaries as if there was a breach of a fixed term contract of 2 years contrary to the law.
- viii. That the honourable Arbitrator erred in law and in facts by making decision basing on the exhibit/documents which were not admitted by the Commission during the hearing. The said exhibits were filed after the closure of the hearing on part of the applicant.

Despite filing a counter affidavit, the respondent through, Stanislaus Ishengoma learned advocate of Kesaria & Company Advocates abandoned this application. It was therefore taken exparte as no written submissions were filed in that behalf.

The applicant, told this court that the application if not granted justice will not be served. He narrated all incidences that led to his absence until the dismissal of his application. His affidavit is clear right from para 3.7 to 3.12. stating the main reason being, attending his late sick father, until 17<sup>th</sup> June 2016, when he resumed duties only to be informed on 24<sup>th</sup> June 2016, that application No 44 of 2016, was struck out with leave of 28 days to refile. This had happened on 11<sup>th</sup> May 2016. From there he filed the following applications;

1. Misc. No 305 of 2016, it was struck out for being defective on his concession on 23<sup>rd</sup> March 2017 and granted leave of 14 days to refile.
2. Misc. No. 122 of 2017, which was also struck out on his prayer upon discovering it had defects, it was on 4<sup>th</sup> September 2018, and was given 2 days to refile another one.
3. Misc. No. 416 of 2018, as well was filed and struck out on 12<sup>th</sup> March 2019
4. Misc. No 436 of 2020, was withdrawn by the same person on discovery that the same is did not comply with rule 24 (3) of the Labour Court rules, GN No 106

of 2007. He was again granted until 12<sup>th</sup> October 2020 from 5<sup>th</sup> October 2020 to file another one.

5. Now, he filed this application asking this lenient and extra-patient court to grant him another extension of time.

In his view, he believes his sick father's incidence of 2016 still holds and is a good reason that constitutes sufficient ground for delay. He asked this court to refer to the cases of **Mbagala spiritual Centre v Francis M. Mhayuma**, Revision No. 275 of 2010.

As well, I was asked to apply the overriding objectives as in the case of **Magoiga Gichere vs Penina Yusufu**, Civil Appeal No 55 of 2017 to grant this application.

I have taken time to go through the records attached to the application and I am of the firm view, that this application should not be granted.

The reasons for not granting the same are as follows;

- i. The applicant has not basically accounted for days of delay
- ii. The principle of overriding objectives does not apply in all situations, because the applicant has not shown, there were reasons for failure to act in time. Therefore,



the case of **Magoiga Gichere** (supra) has no application here.

- iii. That the applicant cannot hide in what is called a technical delay because even though she has been in court since 2016, there is no reasons why she could not file proper applications.
- iv. That in 2017, 2018, 2019 and 2020, the applicant filed an application with defect in each year.
- v. I have ventured into the applications as narrated above, it is apparent that all application were either struck out on concession that they had defects or Mr. Ngowi applied for withdrawal to rectify the same.
- vi. In atleast two incidences, the applicant did not comply with rule 24 of the Labour Court Rules, when the court directed him to clearly comply with the same.
- vii. The applicant has not passed a test of prosecuting her case promptly for filing four cases without properly following the procedure
- viii. There is lack of diligence in prosecuting the application on part of the applicant.

Having followed the previous proceedings, it is noted that since 2019, the respondent filed an application for execution. It is stayed because of the applications filed by the applicant. In my considered view, this application is designed to delay the execution. It is so because, if the applicant desires a different out, she has the duty to prosecute her application seriously. In my view, this application is baseless and it should not be granted. I therefore, dismiss this application. I make no order as to costs.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**A.K.Rwizile**

**JUDGE**

**26.11.2021**