

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 370 OF 2021**

**BETWEEN**

**SALHA I. MAWILA ..... APPLICANT**

**VERSUS**

**ATLAS GROUP AFRICA COMPANY LIMITED ..... RESPONDENT**

**RULING**

**S. M. MAGHIMBI, J.**

The applicant filed the present application urging the court to grant extension of time to file a competent application for setting aside dismissal order. The applicant has moved the court under the provisions of Section 94(1) of the Employment and Labour Relations Act No. 6 CAP 366 R.E. 2019, Rule 24(1),(2), (a,b,c,d,e, and f), (3), (a,b,c,d), Rule 55(1) and Rule 56(3) of the Labour Court Rules GN. No. 106 of 2007 read together with Rule 34(1) of the Employment and Labour Relations (General Regulations GN. No. 47 of 2017 the application was supported by an affidavit of Ms. Maria Jackson, learned advocate representing the applicant dated 30<sup>th</sup> September, 2021. The respondent opposed the application by filing a notice of opposition under Section 24(4)(a)(b) of the Rules.

The application was argued by way of written submissions. Before this court the applicant was represented by Ms. Victoria Njau, Learned Counsel whereas Mr. Lucky Mgimba and Mr. Moses Mwitete from Godwin Advocates appeared for the respondent.

Arguing in support of the application Ms. Njau did not advance any other reasons than the ones quoted below:

*'That the applicant brought an application for setting aside the dismissal order that is Misc. Labour Application No. 354 of 2019 before Hon. Z.G. Muruke, Judge.*

*That the said application was found incompetent in the eyes of law after the respondent raised a preliminary objection and the applicant conceded over it. The application was then struck out with leave to refile it within 14 days from 13<sup>th</sup> day of October, 2020. That the applicant received the copy of the ruling on 14<sup>th</sup> October, 2020.*

*That according to limitation of time the 14 days granted lapsed on 28<sup>th</sup> October, 2020 which was election day and the following day after was a public holiday (mauled day) hence the time limit for the application should be 30<sup>th</sup> October, 2020.*

*That the whole country suffered network problem on day before election, during election and after election day which makes uneasy for the network users to access the network, so the applicant unable to access online case registration on 30<sup>th</sup> October, 2020.*

*That due to going on network problem, he decided to look for nearby offices which access WI-FI to see whether I could manage access judicial online case registration and so he manages the access it on 03<sup>d</sup> November, 2020 through the use Virtual Private Network (VPN).*

*That during the whole process the 14 days' time granted was already lapsed and the only remedy for it to seek for leave to file the application out of time hence this application.'*

In pursuing the court to grant the extension of time sought Ms. Njau cited numerous court decisions including the famous case of **Puma Energy Tanzania Ltd vs Karim Aziz Bhanji (Misc. Commercial Application 161 of 2019) [2020] TZHCComD 2075 (28 February 2020)**; and other cases which will be considered in the decision.

Responding to the application, Mr. Mwitete submitted on two main grounds. First that the application is incompetent and second was that the application is an abuse of court process because the application has shown no good cause/sufficient ground for it to be granted. As to the ground that the application is incompetent the counsel submitted that the applicant has already been granted 14 days leave by Hon. Muroke, J therefore by granting this application, it may result to non-finalization of this matter. He stated that the applicant did not comply with the order of filing the application within the granted 14 days which defeats the rationale of observance of the court's orders which was emphasized in the case of **Tabitha Maro v. Raddy Fibre Solution Limited, Civil Case No. 214 of 2018** (unreported) amongst others.

Regarding the ground that the application has no good cause for it to be granted, Mr. Kunju submitted that the applicant's allegation of failure of network on election day is an event which can be foreseen by any reasonable man because an election is a nationwide activity. He stated that this court's power to grant extension of time is provided under Rule 56 (1) of the Labour Court Rules, GN 106 of 2007 and that the court's power can be exercised upon good cause shown by the

applicant. In the upshot the counsel urged the court to dismiss the application for lack of merit.

After considering the rival submissions of the parties I find the court is called upon to determine whether the applicant has advanced sufficient ground/reason for the grant of the application.

As stated above, the applicant urges this court to grant extension of time for him to file an application to set aside dismissal order after his previous application was dismissed. As rightly submitted by Mr. Kunju this court's power to grant extension of time is conferred under Rule 56 (1) of the LCR. The discretion to exercise power has to be done judiciously and upon sufficient cause being shown by the applicant. What amounts to sufficient cause has been defined in numerous decisions including the case of **Arisony Gilman v. A to Textile Mills Ltd, Labour Division, Arusha, Revision No. 06/2013** (unreported)

*"What amounts to sufficient cause has been defined from decided cases, a number of factors has to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on part of the applicant."*

In the application at hand the applicant's reason for the delay to refile the application within 14 days granted by the court is network problem on election day. The order to refile the application was granted on 13<sup>th</sup> October, 2020 thus the intended application was supposed to be filed by 27<sup>th</sup> October, 2020. Though the applicant has not stated in his application by I have done due diligence and the record of the court shows that the first application for extension of time was filed on 18<sup>th</sup> November, 2020 which was registered as Misc. Application No. 527 of 2020. The said application was struck out on 24<sup>th</sup> September, 2021 for being supported by a defective notice of application. Again, the applicant was granted leave to refile the application by 30<sup>th</sup> September, 2021. Following such order the applicant filed the present application on 01<sup>st</sup> October, 2021.

The applicant ought to have advanced reason for the delay from 27<sup>th</sup> October, 2020 to 18<sup>th</sup> November, 2020 the date when he filed the first application for extension of time. None of the reasons has been advanced in this application. On 13<sup>th</sup> October, 2020 the applicant was granted 14 days leave to refile but he opted to wait for the deadline to refile his application until he was faced with network challenge due to national election which was conducted on 25<sup>th</sup> October, 2020. Even after

the election the applicant took 24 days to file the application for extension and no reason has been advanced for such delay. On that basis I see lack of diligence on the part of the applicant.

In the result, since the applicant has not advanced sufficient reason for the grant of extension of time sought, the application is dismissed.

Dated at Dar es Salaam this 28<sup>th</sup> day of March, 2022



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