

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

MISCELLANEOUS LABOUR APPLICATION NO. 221 OF 2021

BETWEEN

ROBERT MALISA APPLICANT

VERSUS

CRDB BANK PLC RESPONDENT

RULING

S. M. MAGHIMBI, J.

The applicant filed the present application seeking for extension of time within which to file a notice of appeal. The application was lodged under the provisions of Section 94(1)(e) of the Employment and Labour Relations Act, [CAP 366 R.E. 2019] (herein the Act), Section 11(1) of the Appellate Jurisdiction Act, [CAP 141 R.E. 2019] and Rule 24(1), 24(2)(a),(b),(c),(d),(e),(f), 24 (3)(a),(b),(c),(d), and Rule 55(1)(2) of the Labour Court Rules GN. 106 of 2007. The Chamber Summons was supported by an affidavit of Mr. Walter Goodluck, learned Counsel representing the applicant, dated 06th July, 2021. The application was argued by way of written submissions. Mr. Walter Goodluck from Arick Law Attorneys appeared for the applicant whereas Mr. Juvenalis Ngowi,

Learned Counsel from Dentons East Africa Law Chambers was for the respondent.

I appreciate the comprehensive submissions of the parties which shall be taken on board in due course of constructing this ruling. After considering the parties submissions for and against the application I find that the court is called upon to address whether the applicant adduced sufficient reason for the delay.

Arguing in support of the application Mr. Goodluck prayed to adopt the applicant's affidavit to form part of his submissions. He then submitted that the applicant herein was the applicant in Revision No. 142 of 2020 before this court where it was decided in the applicant's favour. In the said decision, the CMA's award was nullified and the respondent was ordered to pay the applicant 18 month's salary as compensation instead of 12 months awarded by the Arbitrator. Aggrieved by this court's decision, the applicant intends to appeal to court of appeal but he failed to file the notice of appeal timely.

In his affidavit in support of the application the applicant has deponed two reasons for the delay as stated under paragraph 5 of the affidavit in support of the application. The reasons are that the copy of judgement and decree were not supplied to the applicants on time

despite all efforts to obtain them. That at first, the original date to issue the judgement was 14th May, 2021 and unfortunately it was Eid Holliday, and the coming Monday the judge and the clerk look like were all out of office, in Morogoro on official trip. The other reason is that the applicant fell seriously sick hence they could not have an opportunity to meet and give instruction to the advocate about appeal in a timely manner.

Starting with the first reason, I have cross checked the calendar of the year 2021 and it shows that on 14th May, 2021 it was Eid El Fitri holiday as rightly submitted by Mr. Godluck. Therefore, if the judgement was scheduled to be delivered on that date it is understandable that the parties did not appear to court. The court records show that the judgement was delivered on 21st May, 2021 in the absence of both parties. In his submission Mr. Goodluck alleges that the applicant made several follow ups to obtain the copy of the decision until on 10th June, 2021 when he was served with the impugned decision.

Rule 83(1) of the Court of Appeal Rules, GN 368 of 2009 (herein Court of Appeal Rules) requires a person aggrieved by the decision of the High Court to file notice of appeal in the High Court where the decision was delivered. Rule 83(2) provides for time to lodge the said notice whereby, subject to the provisions of Rules 91 and 93, the notice

is to be lodged within thirty days of the date of the decision against which it is desired to appeal. The impugned decision was delivered on 21st May, 2021 therefore the applicant was supposed to file the notice of appeal by 20th June, 2021. The record shows that the present application was filed on 06th July, 2021 thus, pursuant to the provision above the applicant delayed for 15 days to file the notice of appeal. By the time the applicant was served with the impugned decision he had ten 10 days to file the intended notice of appeal however he failed to do so.

In the submission Mr. Goodluck alleges that after reading the impugned decision the applicant fell sick and he has attached the medical certificates to prove such fact. On his part Mr Ngowi disputed the hospital annexture and contended that it indicates the applicant had medication on 15th July, 2021 after filing the present application. After looking at the contested annexture it shows that the applicant went to hospital on 15th June, 2021 and not 15th July as argued by Mr Ngowi. However, the issue of sickness was stated in the affidavit of the applicant, but no medical sheets were annexed thereto. It was not until in the written submission that the medical sheets were annexed. It is trite law that submissions are not evidence; they are mere elucidations

of what was stated in the affidavit, therefore any annexure to the submissions to be used as evidence does not carry any weight. The applicant ought to have attached this proof in the affidavit. Failure to do so is as good as not having supporting evidence to his assertions. Thus, I find the reason of sickness would have been sufficient to grant the application if the medical records were annexed in the affidavit. However, it is not until filing submissions that the applicant attached the medical records. It is trite law that submissions are not evidence, it is just an elaboration of the evidence already submitted hence the medical records in the submission is as good as no records at all. Therefore the ground of sickness was not substantiated. After all the applicant has not explained why a simple notice could not be filed immediately after receiving the award and waited until he fell sick.

On the above findings, I find that the applicant has failed to adduce sufficient reasons to warrant extension of time. This application is therefore dismissed.

Dated at Dar es Salaam this 30th day of March, 2022.



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S.M. MAGHIMBI
JUDGE