

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

MISCELLANEOUS APPLICATION NO. 428 OF 2022

IRON AND STEEL LIMITED APPLICANT

VERSUS

MARTINE KUMALIJA & 117 OTHERS RESPONDENTS

EXPARTE-RULING

Date of last Order: 28/11/2022
Date of Ruling: 2/12/2022

B. E. K. Mganga, J.

Brief facts of this application are that, on 6th July 2011 applicant terminated employment of the respondents. Aggrieved with termination, respondents filed the dispute before the Commission for Mediation and Arbitration henceforth CMA complaining that applicant terminated their employment unfairly. On 27th July 2014 the arbitrator issued an award that applicant terminated employment of the respondents unfairly.

Applicant was aggrieved by the CMA award, as a result, she filed Revision Application No. 187 of 2015 but the said Revision Application was dismissed by this Court (Hon. I. Aboud, J.) for want of merit. Upon dismissal of the said Revision Application, respondents filed Execution No. 247 of 2019. On 9th June 2022 respondents prayed to proceed with

execution by attachment and sale of all products of steel bars situated at the decree debtor's industry located at plot No. 33 Mikocheni Area in order to satisfy the decree of TZS 166,380,000/= that was awarded by CMA and upheld by this court. Applicant was unhappy with computation of the said amount hence raised objection. On 30th May 2022, Hon. S. B. Fimbo, DR the executing officer delivered a ruling ordering execution to proceed as she noted that applicant has been playing delay tactics for eight years from the date the award was issued at CMA.

On 29th October 2022, applicant filed this application seeking extension of time within which to file a Notice of Appeal out of time so that she can appeal against the Ruling of the Deputy Registrar(Hon. S.B. Fimbo) that was delivered on 30th May 2022 in Execution No. 247 of 2022.

When the application was called on for hearing, Mr. Gilbert Mushi ,learned advocate appeared and argued for and on behalf of the applicant but the respondent did not enter appearance. Since respondents were aware that the application was scheduled for hearing but did not appear, I agreed with submissions of Mr. Mushi counsel for the applicant and proceed to hear the application exparte.

Submitting on the merit of the application, Mr. Mushi argued that Applicant has filed this application for extension of time to file an appeal

before the Court of Appeal against the Ruling and order of the Deputy Registrar dated 30th May 2022 in Execution No. 247 of 2019. He went on that the ground for delay is that on 07th June 2022 applicant filed Revision No. 169/2022 against the decision of the Registrar and that on 21st October 2022 this court (Hon. Mteule, J) held that the Court has no jurisdiction to revise the order of the Deputy Registrar. Counsel for the applicant submitted that applicant filed this application on 29th October 2022 while out of time for 120 days on technical grounds while prosecuting the aforementioned revision. He added that applicant delayed for 8 days from 21st October 2022 from the date she was served with the decree. Mr. Mushi strongly submitted that there was technical delay and that the same is a ground for extension of time. He cited the case of ***Hamis Babu Bally V. The Judicial Officers Ethics Committee & 3 Others***, Civil Application No. 130/01 of 2020, CAT (unreported), ***Christopher Gasper & 5 Others V. Tanzania Port Authority (TPA)***, Misc. Appl. No. 126 of 2015 HC (unreported) to support his submissions.

In his submissions, Mr. Mushi conceded that in the affidavit of Idrissa Ally in support of the application, there is no paragraph showing the date as to when the applicant was served with the decree and further that applicant has not accounted for the delay after being served with the

decree. He concluded his submissions by praying that the application be allowed.

I should start with a settled position of the law that in an application for extension of time, the court is being asked to exercise her discretion and that discretion must be exercised judiciously as it was held in the case of *Mza RTC Trading Company Limited vs Export Trading Company Limited*, Civil Application No.12 of 2015 [2016] TZCA 12. It is also a settled principle of law that in an application for extension of time, applicant must show good reason for the delay and must account for each day of the delay. See the case of **Sebastian Ndaula vs. Grace Lwamafa**, Civil Application No. 4 of 2014, CAT (unreported), *Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another*, Civil Application No. 278/15 of 2016, CAT, (unreported), *Finca T. Limited & Another vs Boniface Mwalukisa*, Civil Application No. 589 of 2018) [2019] TZCA 56, *Zawadi Msemakweli vs. NMB PLC*, Civil Application No. 221/18/2018 CAT (unreported), *Elias Kahimba Tibendalana vs. Inspector General of Police & Attorney General*, Civil Application No. 388/01 of 2020 CAT (unreported) and **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, CAT

(unreported) to mention but a few. In ***Mashayo's case*** (supra), the Court of Appeal held *inter-alia* that: -

"...the delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."

In the application at hand, Mr. Mushi, learned counsel for the applicant, conceded that in the affidavit in support of the application, applicant did not account for each day of the delay from the 30th of May 2022 to the date of filing this application namely on 29th October 2022. He conceded further that applicant did not account for the delay from 21st October 2022 the date Revision application No. 2022 was dismissed for want of jurisdiction to 29th October 2022 amounting to 8 days. As much as I agree with counsel for the applicant based on the cases he cited, that technical delay is one of the grounds for extension of time, applicant was under duty to account for each day of the delay. The eight days after the order of Hon. K.T.R. Mteule, J to the date of filing the application remains unaccounted for. It is my view that applicant has not shown good reasons for the delay and has not accounted for the delay. Much as I agree with applicant's counsel that technical delay is one of good grounds for extension of time, I hasten to point out that in the application at hand there was no technical delay. I am of that view because it cannot be said

that by filing an application for revision before this court applicant was pursuing a similar application to the one at hand. In the application at hand, applicant is seeking extension of time to file a Notice of Appeal so that she can appeal to the Court of Appeal while in the aforementioned revision, applicant filed an application for revision. In such circumstances, it is my view that what is alleged by applicant does not fall under the ambit of technical delay hence does not warrant this application to be granted. For all pointed hereinabove, I find that this application is devoid of merit. I therefore I hereby dismiss it.

Dated in Dar es Salaam on this 02nd December 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 02nd December 2022 in chambers in the presence of Frank Kashumba, Advocate holding brief of Gilbert Mushi, Advocate for the Applicant and Martine Kumalija and Abdul Mang'oli, the Respondents.



B. E. K. Mganga
JUDGE