

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

MISCELLANEOUS APPLICATION NO. 229 OF 2022

BETWEEN

REGINA MOSHI APPLICANT

VERSUS

THE BOARD OF TRUSTEES OF NATIONAL

SOCIAL SECURITY FUND (NSSF) RESPONDENT

THE HON. ATTORNEY GENERAL INTERESTED PARTY

RULING

S.M. MAGHIMBI, J;

The applicant was employed by the respondent as an Accountant from 03/09/1992 until 02/06/2014 when she was terminated. Aggrieved by the termination the applicant referred the matter to the Commission for Mediation and Arbitration claiming for unfair termination both substantively and procedurally. After considering the evidence of the parties the CMA found that the applicant was fairly terminated both substantively and procedurally. Dissatisfied by the CMA's decision, the applicant filed revision application before this court where the CMA's decision was also upheld. Further aggrieved by this court's decision, the applicant lodged a revision application to the Court in which on the 16th day of May, 2022, the Court of Appeal strike out the application on the ground that the proper cause that the applicant should have taken was to appeal against the decision of this court.

Following the striking out of the application by the Court of Appeal, the applicant is still interested to pursue her rights through an appeal and has lodged this application for extension of time so that she can file a notice of appeal. On the 25th day of November, 2022 when this application came for hearing Mr. Silvanus Mayenje represented the applicant while Ms. Grace Luondo, learned State Attorney represented the respondent. I appreciate the comprehensive submissions of the parties which shall be taken on board in due course of constructing this ruling.

Since there is no dispute of the procedures that were followed by the applicant after the judgment of this court, my determination on whether sufficient reasons have been adduced will only focus from the 16th May, 2022 when the court of Appeal struck out the applicant's application to the 16th June, 2022 when this application was admitted in this court. For this period, the applicant allege that her advocate was in Mwanza attending another case and later in Arusha to attend the Tanganyika Law Society Annual General Meeting. In the case of **Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania**, the Court of Appeal laid down principles to be considered in the grant of an application for extension of time where it was held that: -

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however the following may be formulated: -

- i. The applicant must account for all the period of delay.*
- ii. The delay should not be inordinate.*
- iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

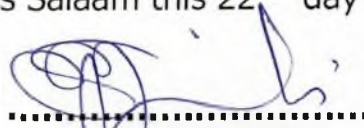
As for the case at hand, the period of delay as stated is only one month and within that one month, the applicant has elaborated that her advocate was out of town. Although Ms. Lupondo strongly argued that there are some unexplained delay of a few days and urged the court to find that no sufficient reasons were adduced, with respect, the law was not so mean to require the applicant to explain each day of delay from morning to evening and what the applicant did since she woke up. My take is that by saying the applicant has to explain for each day of delay it means that no lapse of time should go unexplained and not literal meaning of each day of delay. The general rule is that the delay should not be inordinate and the applicant must show empathy in pursuing her right. The question is whether with all the explanations on the delay and the way the applicant has been up and running in pursuing her right, we should still term it as an ordinate delay. On my part, on those observations, of how the applicant was in the court corridors pursuing her right should not be unrecognised because she did not sleep on her rights.

I have also posed and asked myself, with all those procedures and action the applicant took, the delay is in less than one month to lodge this application, is this delay inordinate to dismiss this application. My strong view is that the delay under the circumstances is not inordinate because from the time the decision of this court was delivered, to the time the matter was struck out at the Court of Appeal, there is no evidence that the applicant acted negligently. That is sufficient reason to warrant the exercise my discretion to extend time.

In that regard, I hereby allow this application. Time is hereby extended for the applicant to lodge her intended notice of appeal to appeal to the Court of Appeal. Given the time of the year that this ruling is delivered, during court vacation, the applicant is granted thirty (30) days within which to lodge her intended notice of appeal.

Dated at Dar es Salaam this 22nd day of December, 2022.




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S.M. MAGHIMBI
JUDGE