

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISC. APPLICATION NO. 258 OF 2021

GABRIEL MODEST NJAUAPPLICANT

VERSUS

FAITH KASULWA RESPONDENT

(From the decision of the Commission for Mediation & Arbitration of DSM at Kinondoni)

(Kiwelu : Arbitrator)

dated 21st October, 2020

in

No. CMA/DSM/KIN/420/2020

EXPATE RULING

5th April 2022

Rwizile J.

This is an application for extension of time to file a revision application. It was filed on 4th August 2021. Its background shows that, the applicant alleged was employed by the respondent to plant banana plantation, and other trees and take care of the garden. He was employed on 1st February

2004 and that he has never since been paid any salary until he was terminated on 16th July 2019. He did his duties, in consideration and promise that in turn, he will build for him a house of three or four rooms. He stayed therefore some time like 15 years. Suddenly, the respondent appeared and chased him away without fulfilling any promises. He reported to the local government authority, where he was advised to file a matter at the land courts. Unfortunately, before that was done, his uncle got sick and later died. He was then buried on 1st January 2020. The applicant then returned to Dar es salaam and filed a dispute with the commission. It was on 28th May 2020, claiming for extension of time, which he was not successful. His application was dismissed and was not satisfied. He filed a Revision Application No. 534 of 2020, asking this court to set the decision of the commission aside. The same was struck out on 24th March 2021 for being incompetent and was given 14 days to file a proper application. He then filed this application on 29th July 2021. He has asked this court to grant this application after advancing the following issues;

- i. That the applicant's prayer to this court is for extension within which applicant may refile the revision

- ii. That the applicant has an overwhelming chance to succeed when leave is granted.

The application has been heard orally before me. The applicant was represented by Mr. Cosmas Kumaliya Maige a personal representative. The same has been heard ex parte because the respondent did not appear when the same was for hearing.

When submitting on the issues, the applicant was brief and clear that he was sick and is still sick and that he was attended by the doctor at Miko and Genesis Hospital here in Dar es Salaam. Saying those are the reasons for his delay to refile the application. He asked this court to grant this application.

Having heard the applicant, I have to state that Under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019] extension of time can be granted upon showing sufficient cause. For ease reference the same states;

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be

made either before or after the expiry of the period of limitation prescribed for such appeal or application.

It is trite therefore that, granting or refusing extension of time is an absolute discretion of the court. Though, for the same to be granted, one must show sufficient cause and account for each day of delay. This was stated in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, where the Court of Appeal of Tanzania held inter alia that:

"...It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse, extension of time may only be granted where it has sufficiently established that the delay was with sufficient cause..."

I am also fortified by the case of **Wambura N. J Waryuba vs The Principal Secretary Ministry for Finance and Another**, Civil Application No.320/01 of 2020, when the Court of Appeal held that;

"...It is essential to reiterate here that the Court's power for extending time under Rule 10 of the Rules is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown.

The question to be determined is whether the applicant has shown sufficient cause for delay. In the case of **Lyamuya Construction Co. Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010 and see also the case of **Wambura N. J Waryuba (supra)** at page 7. The Court of Appeal held that;

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

In this case, the applicant has stated that the reason for delay is sickness. He got sick a day after he was granted time of 14 days to file a proper application. He has told the court through his personal representative that he attended the hospital for treatment. He attached the documents as exhibits. . On my perusal of the same, it shows, he happened to attend Genesis dispensary on 25th March 2021, where he made some tests which

included routine urine and malaria with both nil results. On the next time he attended the hospital, it was on 12th April 2021, he also tested H.pylori and widal test which seemed to show no reaction .

It is therefore not known if the applicant was indeed sick and if he was, he did not prove the amount of sickness as to prevent him from filing his application in time. Having complained of leg pain, ab pain and as so stated in annexures M1 and M2 respectively. Having gone through the facts and the obtaining circumstances, I think the applicant has not shown sufficient cause. And above all, there is unexplained delay for nearly 4 months. This application has no merit. It is dismissed. No order as to costs.




A. K. Rwizile

JUDGE

05.04.2022