

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

MISCELLANEOUS APPLICATION NO. 416 OF 2021

PALM BEACH CASINO APPLICANT

VERSUS

JOHN J. CYPRIAN RESPONDENT

RULING

28th March & 19th May 2022

Rwizile, J

This application is for extension of time. **PALM BEACH CASINO** is applying for time to lodge a notice of appeal out of time to the Court of Appeal. This is against the Judgement and Proceedings of this Court delivered on 02nd September 2020 in Revision Application No. 696 of 2019.

Briefly, the applicant employed the respondent on a fixed term contract of one year which was renewable. In September, 2016 they entered into a mutual agreement to terminate contract of service and the respondent was paid all of his benefits. On January, 2017 the applicant was served with the CMAF.1 containing the claims of unfair termination of the respondent and was demanding compensation. The decision was against the respondent.

Being dissatisfied the respondent filed the application for Revision No. 696 of 2019 and the Judgement was in favour of the respondent. The applicant was unsatisfied and filed a Review (Miscellaneous Application No. 408 of 2020). The matter was withdrawn for having no merit by the personal representative because it was found attacking the merits of the decision and did not deal grounds for review. That done, the applicant then has filed this application seeking leave to challenge the same before the Court of Appeal.

The application is supported by the affidavit of Mariam Abbas, Principal Officer of the applicant, to oppose the same, the respondent filed a counter-affidavit.

The hearing of this application was by oral submissions. The applicant enjoyed the service of Abubakar Salim, learned Advocate for the applicant whereas the respondent was represented by Omega Steven Myeya, learned Advocate.

Supporting the application Mr. Abubakar submitted that the reason for the delay was because of the personal representative, who represented the applicant by then applied for the review of the decision. For that reason, he stated that when they were engaged, they had to withdraw it and prefer an appeal.

He continued to state that, there was illegality in the process as the Court held that there was unfair termination while the respondent was in fixed term contract. He supported his submission with the case of **Victoria Real Estate Development Ltd v TIB and 3 others**, Civil Appeal No. 225 of 2014.

Mr. Abubakar prayed for the extension of time since section 11(1) of AJA gives power to the Court do so.

It was his view that the delay was caused by technicalities and so a technical delay, reference was made to the case of Mustapha **Ibrahim Kasam t/a Rustam Brothers v Maro Mwita Maro**, Miscellaneous Commercial case 64 of 2018 at page 5, **IAN Pattie Associated Ltd v. Well Worth Hotels and Lodges**, Miscellaneous Commercial Application No. 300 of 2017 at page 5 and **Stanzia Stanley Kessy v The Registered Trustees of Agriculture Inputs Fund and Others**, Civil Application No. 46 of 2005 page 5. He prayed for the application to be granted.

In reply, Mr. Omega submitted that the applicant did not act diligently as in Miscellaneous Application No. 408 of 2020, the Court in suo moto noticed the application to have grounds for appeal and not review. He

continued that the application took 79 days from the day it was withdrawn on 11th August 2021 and that there was no reason stated for the delay.

He stated that in the case of **Wambele Mtumwa Shahame v Mohamed Hamis**, Civil Reference No. 8 of 2016 at page 3 it was stated that the delay taken was inordinate. While in the case of **Ian Pattie Associated Ltd** (supra), it took 20 days. The matter before this court took 79 days. Therefore, he said, the cases are distinguishable. Mr. Omega submitted further that Rule 43(1) of G.N No. 106 of 2007 provides for the representative to have knowledge and capacity. For him the personal representative of the applicant acted on gross negligence.

He continued to state that the days of delay were not accounted for. As it took over one year from the date it was withdrawn to file this application.

Also, in the issue of illegality, he stated that CMA decision has no illegality and so this Court can not deal with illegality which is not present and no illegality in the High Court decision as it was not stated. He stated that the case of **Stanley** is distinguishable as the applicant did not act immediately.

He submitted that negligence is not ground for extension of time and also technical delay was not an excuse as the personal representative of the

applicant was knowledgeable enough. He therefore prayed; this application be dismissed.

In a rejoinder Mr. Abubakar argued that accounting for each day of delay is a principle. He argued that in the issue of accounting for the delay, the case of **Shahame** (supra) was the decision before amendment of AJA G.N. 344 of 2019 by introducing section 3A and 3B on overriding objectives principle. He further stated that the Court has to deal with substance of the case not technicalities. He continued that the issue of illegality the respondent can challenge before Court of Appeal if allowed to appear before it. That technically, the applicant was in Court but did not know exactly a right track. He reiterated his prayer that the application to be granted.

After going through parties' submission, the court has to determine *if the applicant has sufficiently accounted for delay.*

It is an established principle of law that a notice of appeal against the decision of the High Court has to be filed within thirty days from the date of the judgement. This is provided for under Rule 83(1)(2) of the Court of Appeal Rules G.N. No. 368 of 2009, that: -.

- (1) *Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the registrar of the High Court*

(2) *Every notice shall, subject to the provisions of Rules 91 and 93, be so lodged within thirty days of the date decision against which it is desired to appeal.*

But also, section 11(1) of the Appellate Jurisdiction Act [CAP 141 R.E. 2019] gives power to the High Court to extend time. The same provides: -

"Subject to subsection (2) the High Court or where an appeal lies from a subordinate Court exercising extended powers, the subordinate Court concerned, may extend the time for giving notice of intention to appeal from a judgement of the High Court or of the subordinate Court concerned, for making an application for leave to appeal or for a certificate, that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."

The law provides, time may be extended when the applicant shows good cause for delay. A good cause for delay depends on the circumstances of each case. This was stated in the case of **Wambura N.J. Waryuba v The Principal Secretary Ministry for Finance and Another**, Civil Application No. 320/01 of 2020, it was held that: -

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

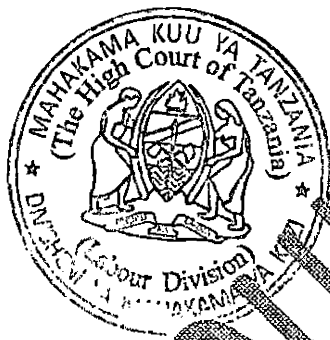
The case of **Lyamuya Construction Company Ltd V. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) laid down following principles: -

- 1. The delay should not be inordinate*
- 2. The applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- 3. 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.*

It is in record that the judgement intended to be appealed against is Revision No. 696 of 2019. The same was delivered 02nd September 2020. Miscellaneous Application No. 408 of 2020 for review was preferred, only to be withdrawn on 11th August 2021. Then came this application which was instituted on 29th September 2021, almost 49 days from the date of withdrawal.

It is therefore clear to me that the applicant was in court since he lost the application for revision. The same was, I think prosecuting cases that were not properly grounded on were filed in a wrong forum. This is in my view considered a technical delay, which constitutes in some aspects a good ground for granting extension of time.

For the above stated reasons, this application, accordingly has merit. It should be granted as I hereby do. The applicant is therefore given 14 days to take the needed action. I make no order as to costs.



A.K. Rwizile

JUDGE

19.05.2022