IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 381 OF 2021

BETWEEN

ELDRIDGE INVESTMENT (T) LIMITED ..... APPLICANT

VERSUS

HUSNA KASSIM ..... RESPONDENT

RULING

31st March & 20th May 2022

Rwizile, J

This application is for extension of time. The applicant is applying for time to lodge a notice of appeal out of time. This is against the Judgement and Decree of this Court Revision No. 881 of 2018 dated 27th March 2020.

Briefly, the respondent was a probationary employee. She was employed by the applicant in an oral dated 23rd June 2014. On 15th May 2015 by a letter, the respondent was suspended. Thereafter was issued with the letter to show cause to why should not be terminated for being suspected of stealing 100,000.00TZS. On 17th May 2015, the respondent replied the letter and denied all charges. On 18th May 2015 the applicant called the respondent to attend disciplinary hearing. She was found guilty and

terminated on 01st June 2015 and was paid terminal dues. Aggrieved, the respondent filed a dispute to the Commission for Mediation and Arbitration (CMA). The award was in favour of the respondent. The applicant was ordered to pay the respondent TZS 2,544,230.00 being 6 months compensation, notice and severance as terminal benefits. The applicant was aggrieved and unsuccessfully filed Revision No. 881 of 2018 before this Court. Still aggrieved, he is now advancing to the Court of Appeal, but found herself out of time, hence this application.

The application was supported by the affidavit of Carl Davis, Principal Officer of the applicant.

The hearing of this application was orally made. The applicant enjoyed the service of Carlos J. Cathbety, learned counsel, whereas the respondent was represented by Edward Simkoko, from TASIWU- a trade union.

Supporting the application Mr. Carlos submitted that the decision was given on 27th March 2020 and the reason for delay was due to the conduct of the trial judge and so reported the matter to PCCB. The matter was being investigated and the record were taken. He continued to submit that the applicant was represented by the personal representative who gave the applicant bad advice.

Mr. Carlos submitted that the judgement and decree of CMA were not proper. There was an illegality as it acknowledges the respondent as an employee when he was not. To support his submission, he cited the case of **Charles Christopher Humprey Kombe v Kinondoni Municipal Council**, Revision No. 81 of 2017 at page 6. The learned counsel therefore asked this court to grant the application.

Opposing the application, Mr. Simkoko submitted that the applicant did not show cause for delay. He stated further the discretion of the court to extend time should be considerate and should grounded on sufficient cause. He then stated that the decision of the court was issued on 27th March 2020, while this application was filed seventeen months later. The applicant therefore asked this court hold that delay was inordinate, and that it was actuated by laggardness and that she did not prove that the record was taken to PCCB. Mr. Simkoko therefore asked this court to dismiss this application.

In re-joining, Mr. Carlos submitted that there was a delay, but there no evidence of how the respondent will be prejudiced if the application is granted. He argued further that the applicant has shown there was illegality, because the respondent was in probation. He stated that other

points of delay were that the records were taken to PCCB for investigation and so delayed.

Mr. Carlos stated that all was done based on the opinion of the personal representative who report to PCCB. He stated that there was no negligence on party of the applicant. He asked, for interest of justice, this application be granted.

After going through parties' arguments, the court has to determine *whether there is sufficient reason for delaying to file notice of appeal.*

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 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.*

Further under section 11(1) of the Appellate Jurisdiction Act [CAP 141 R.E. 2019], this is empowered to extent time to file a notice of appeal. the law states: -

> *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."*

As 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.

In 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) the following principles were laid down: -

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.*

The applicant's reason for delay was stated that apart from the looking for an advocate to assist him, she also had the records taken to the Prevention and Combating of Corruption Bureau for investigation(PCCB).

On my perusal of the record, it is apparent that the Judgement and Decree of Revision No. 881 of 2018, was delivered on 27th March 2020. This application was filed on 08th October 2021. This shows there was a lapse of time of over eighteen months. The applicant did not show how looking of an advocate took that long. If indeed that was a reason, then it was made negligently.

The applicant as well stated that after the decision from this Court came out, she complained to the PCCB, which started to do investigation. The applicant was well aware that taking "extra-judicial" steps is a matter of choice. She had the choice to complain for any misdeed she felt was done by the trial judge. But this did not prevent her from taking judicial measures. Neither the applicant nor the personal representative who she

alleged advised her to take that step, does not know that the decision of this court can only be set aside by the Court of Appeal.

The applicant also in her submission stated that there was illegality in the decision of the court and the award by the CMA. He stated that the respondent at CMA was termed as the employee of the applicant while she was not. It has been held times without number that for illegality to hold, it must be apparent on the face of the judgement. In the case of **Finca (T) Ltd and Another v Boniface Mwalukisa,** Civil Application No. 589/12 of 2018, it was held that: -

> *"It was held that illegality is a good ground for extension of time. But in order to plead illegality successfully, it must be glaringly apparent on the face of the record"*

In this case, illegality stated is not in the face of the record. This is because, in order to establish that the respondent is not an employee of the applicant, there must be long drawn arguments to prove so.

Conclusively, I have to state clearly that when a party who loses a case, does not take judicial steps to remedy the right infringed, and decides to move around complaining elsewhere does so at his own choice and his own peril. This habit must be discouraged since court actions have specific

time, which parties should abide by, unless they have good reasons for not doing so. This court therefore considered time delayed is not only shockingly inordinate but also unopenable This application has no merit. It is dismissed. I make no order as to costs.

A.K. Rwizile

JUDGE

20.05.2022