

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

DAR ES SALAAM

MISC. LABOUR APPLICATION NO. 323 OF 2021

BETWEEN

CHARLES DAUD & 15 OTHERS..... APPLICANT

AND

TANZANIA PORTS AUTHORITY RESPONDENT

RULING

Date of last order: 17/02/2022
Date of Ruling: 24/02/2022

B.E.K. Mganga, J.

Applicants were employees of the respondent. On 15th September 2018, the respondent terminated employment of the applicants. Aggrieved by that termination, applicants filed Labour dispute No. CMA/DSM/TEM/622/2018/210/2018 before the Commission for Mediation and Arbitration henceforth CMA at Temeke. On 21st May 2019, Kokusiima, L, arbitrator, sustained the preliminary objection raised by the respondent that applicants who were Public Servants, did not exhaust all remedies provided for under the Public Service Act prior to filing the dispute at CMA. Being further aggrieved by the CMA ruling and being out of time, applicants has filed this application seeking the court

to extend time within which to file an application for revision before this court. The notice of application is supported by an affidavit sworn by Charles Daud. In the said affidavit, the deponent stated that being aggrieved by the aforementioned ruling, on 1st July 2019 they filed revision application No. 574 of 2019, but the same was withdrawn on 4th June 2020 with leave to refile on or before 10th July 2020 under representative revision. Mr. Daud deponed further that, on 29th June 2020 filed Misc. Labour Application No. 241 of 2020, seeking leave to represent 21 others in the intended labour revision. That, the said Misc. application was struck out on 18th March 2021 as the application was not made by all applicants. He deponed further that, leave was granted to the applicants to file a proper application on or before 15th April 2021. Mr. Daud stated further in his affidavit that, on 15th April 2021 only sixteen applicants out of 22 signed and filed Misc. Labour Application No. 125 of 2021 seeking leave of the court so that Charles Daud can file revision application for and on behalf of 15 others. He stated further that, on 18th August 2021 the court granted leave for Mr. Charles Daud to file revision application for and on behalf of sixteen others.

Respondent filed the notice of opposition supported by a counter affidavit affirmed by Mwantumu Selle, her principal officer. In the said

counter affidavit, Ms. Selle, either noted or admitted all paragraphs in the affidavit in support of the application save for paragraph 3 of the affidavit in support of the application. Responding to paragraph 3 of the affidavit in support of the application, Ms. Selle deponed that applicant has failed to establish sufficient reasons for extension of time to be granted.

The application was disposed by way of written submissions. In his written submissions on behalf of the applicant, Ms. Stella Simkoko, advocate, submitted that there was technical delay because the first revision application was filed within time. Counsel for the applicant cited the case of **Bank M (Tanzania) Limited v. Enock Mwakyusa**, civil Application No. 520/18 of 2017, CAT (unreported) to bolster her submission that technical delay is a good ground for extension of time.

In her written submission in opposition of the application, MS. Rehema Mtulya, State Attorney submitted that applicant has failed to advance good reasons for the delay. State Attorney cited the case of **Mumello v. the Bank of Tanzania [2006] EALR 227** to support her submission that extension of time being a discretion of the court, can only be granted upon the applicant that there was sufficient cause for the delay. State Attorney cited the case of **Lyamuya Comstruction**

Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT (unreported) that extension of time is a discretion of the court which need to be exercised judiciously, and further that, the delay is not inordinate applicant should have shown that he/she was diligent and not negligent or sloppiness and the court must feel that there were sufficient cause for the delay. State Attorney cited the case of **Kalunga and Company Advocates v. NBC [2006] TLR235** that for extension of time, there has to be explanation or materials upon which the court may exercise its discretion. Ms. Mtulya, State Attorney submitted further that, advocate for the applicant was expected to know the law before filing the revision application that was found incompetent for lack of representative order. State Attorney cited the case of **Wankira Benteel v. Kaiku Foya**, Civil Reference No. 4 of 2000, CAT (Unreported) that mistake of counsel does not constitute sufficient reason for extension of time.

In rejoinder submission, counsel for the applicant submitted that **Wankira,s case** ,(supra), does not apply in the application at hand as counsel for the applicant was not negligent.

From the outset, I should point out that, in the cases cited by State Attorney, the Court of Appeal outlined guiding principles while dealing with an application for extension of time. In these cases, the Court of Appeal emphasized that, in application for extension of time, applicant has to show sufficient cause for the delay and has to account for each day of the delay. That is the principle and I have no quarrel with that.

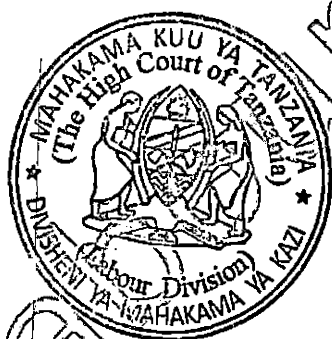
The only issue is whether, applicants has proved that the delay was due to sufficient cause and have accounted for that delay. Reading the affidavit in support of the application and submissions by counsel for the applicants, it is clear that the only reason assigned is technical delay, meaning that applicants filed revision application well within time, but they found themselves out of time after the said revision application was struck out for being incompetent. In other words, all the time, applicants were in court corridors fighting for their rights. It is evident from the affidavit in support of the application, there is technical delay. Technical delay is a good cause for extension of time as it was held by the Court of Appeal in the case of ***Hamis Mohamed v. Mtumwa Moshi, Civil Application No. 407 of 2009*** (unreported) but for it to be a good cause for extension of time, it has to be shown that applicant was

diligent in the course of pursuing his or her right and not negligent or careless.

Ms. Mtulya, State Attorney, submitted that counsel for the applicants was negligent and that she was supposed to know the law before filing applications that were struck out. On the other hand, in a rejoinder, counsel for the applicant submitted that she was not negligent. Admittedly, several applications filed by the applicant were struck out for being incompetent. From both the affidavit and the counter affidavit, it is not shown as whether applicants were represented by an advocate or not for the court to be in apposition to determine whether mistakes were committed by applicants themselves as were unrepresented or their advocates. As pointed hereinabove, in the counter-affidavit, respondent did not supply information that is helpful for the determination of the application apart from either noting/admitting the contents of the paragraph or disputing them. There is nothing in the counter-affidavit showing that mistakes were committed by counsel for the applicants. As submissions that mistakes were committed by counsel for the applicants is not in evidence of the respondent, that submissions from the bar, that counsel for the respondent was negligent, in my view, is not fair and cannot be acted

upon because that is not evidence. I expected this information to be contained in the counter-affidavit and make it clear, but it was not. In my opinion, since the submission that counsel for applicant was negligent is submission from the bar, which is not evidence, and taking into consideration that applicants are lay persons and that at all times they were in court, as there is technical delay, which is a good ground for extension of time, I grant this application. Leave is hereby granted to the applicants to file the intended revision application within fourteen (14) days from the date of this ruling. To be precise, the intended revision application be filed on or before 10th March 2022.

Dated at Dar es salaam this 24th February 2022.




B.E.K. Mganga
JUDGE