IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 536 OF 2020

SHARGIA FEIZI.....APPLICANT

VERSUS

1) BATI SERVICES COMPANY LTD ..... 1ST RESPONDENT

2) HERITAGE INSUARANCE CO. LTD .....2ND RESPONDENT

RULING

16th December 2021 & 24th February 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 dated 28th August, 2020 in Revision No. 317 of 2019.

Factually, the applicant was employed by the 1st respondent. When on duty one day, she was gunshot by robbers. She sustained injuries leading to permanent disabled. To claim for compensation for breach of duty from her employer, she filed a labour dispute No. CMA/DSM/110/R.969/14. The 2nd respondent as an insurer, was later joined in the proceedings. After a

hearing, the CMA determined the matter in her favour. The 2nd respondent was ordered to pay compensation to her.

Aggrieved by the CMA award the 2nd respondent filed Revision No. 317 of 2019 to challenge the finding of the CMA. She was successful. The decision of the CMA was overturned. Being dissatisfied with the decision, the applicant filed this application applying for extension of time so as to file a notice of appeal.

The hearing of this application was by written submission. The applicant enjoyed the service of Blandina Kihampa of Asyla Attorneys. The 1st respondent was represented by Samah Salah of IMMMA Advocates while the 2nd respondent was represented by Victoria George of Legal Link Attorneys.

Supporting the application, Blandina Kihampa learned counsel submitted that the notice of appeal was filed on 24th November, 2020 when the decision to be appealed against was delivered on 28th August 2020. This, it was argued, took 57 days to file the same. The reason for delay is an outbreak of COVID – 19 and several court adjournments.

The learned counsel went on submitting that, it is the court's discretion to grant extension of time. It was argued, the same happens, when the applicant shows sufficient reasons for delay or shows illegality of the

disputed decision. Supporting his submissions, the following cases were referred, to wit **Maulid Swedi vs Republic**, Criminal Appeal No. 66/11 of 2017, **Arunaben Chaggan Mistry vs Naushad Mohamed Hussein and 3 others**, Civil Application No. 6 of 2016 and the case of **VIP Engineering and Marketing Limited vs Citibank Limited**, Consolidated Civil References No. 7 and 8 of 2006 (unreported).

It was further submitted that the illegality stated is based on what this court held in terms of joining the 2nd respondent at the CMA and that she was not given the right to be heard. In her view, the 2nd respondent was rightly joined as rules of mediation so dictate. For her, since the spirit of the labour Law is based on equity, the court ought to consider the need of doing justice to the parties. The Civil Procedure Code, she added, should not be applied here. She further made it clear that the 2nd respondent was given right to be heard since she was present from mediation stage, called witnesses and had a chance to cross-examine them. This fact, it was submitted, was not disputed by the respondents.

The learned counsel was of the view that, if the application is not granted the applicant is likely to suffer since she has physical disability. She prayed for the application to be granted.

Disputing the application, the counsel for the 1st respondent submitted that when extension of time is at issue, the court has to consider the length of delay, reason for delay, the amount of prejudice to the opposing party and likelihood of success of the intended application.

It was stated that, it is the duty of the applicant to provide relevant material facts in order for the court to exercise its discretion. Supporting the argument, he cited the case of **Maulid Swedi** (supra), **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) and **Mbogo vs Shah** [1968] EA and the case of **Buhiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007. In the cited authorities, it was argued, the applicant has to account for all days of delay for the application to be granted.

The learned counsel submitted as well that the alleged illegality is not on the face of record of the judgement. Further, it was agued that the applicant's delay was inordinate due to lack of diligence. It was said that the applicant's injury, consequences and compensation has already been determined by the court. Therefore, the learned counsel held the view that, the reasons advanced as the cause of delay did not amount to sufficient cause to warrant extension of time.

The counsel argued that, to grant or refuse an application for extension of time is in the discretion of the Court. However, it was argued, this discretion should be exercised by considering the length of delay, the reason for the delay and degree of prejudice that the applicant may suffer for its rejection as was stated in the case of **Moto Matiko Mabanya v Ophir Energy PLC and 2 others,** Civil application No.463/01 of 2017, CA, unreported**.** The applicant, according to the learned counsel, did not sufficiently prove so. It was said, the applicant did not show how the case lost track due to several adjournments. In relation to the day the judgement was issued to the date of filing this application, the learned counsel argued that the delay justifies inaction, apathy, negligence or sloppiness.

It was further submitted that, illegalities raised by the applicant could not stand as the applicant raised the same on two factual issues. To fortify this argument, this court was referred to the case of **Joseph Paul Kyaula Njau and Catherine Paul Kyaula Njau v Emmanuel Paul Kyaula Njau and Hiantha Paul Kyaula Njau**, Civil Application No. **7/5/2016**, Court of Appeal of Tanzania, at Arusha (unreported).

Furthermore, he submitted that the issue of illegality is nowhere to be traced on the face of record, without being discovered by a long-drawn argument.

That means, it was argued the application failed to meet the standard required by the law. In the view of the learned counsel, this application has to be dismissed with costs.

Having gone through the submissions of both parties, this court has to determine if there is *sufficient reason for delaying to file notice of appeal?*

In addressing the issue, as submitted, the relevant provision is Rule 83 (1)(2) of the Court of Appeal Rules GN No. 368 of 2009 which provides;

> *(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 of the decision against which it is desired to appeal"*

It is therefore 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. These are mandatory provisions of the law, which should be complied with. Again section 11(1) of the Appellate Jurisdiction Act [CAP 141 R.E. 2019] provides for powers of the High Court to extend time within which to file notice of appeal. In law therefore time may be extended when the applicant shows good cause for delay.

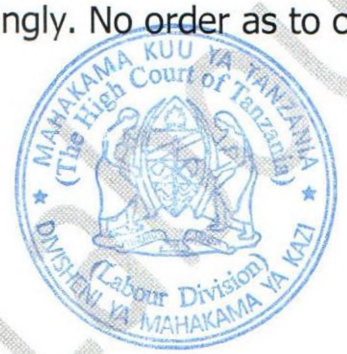
In the case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) the following principles were laid down:

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.*

This means, there has to be reason for delay sufficiently establishing that delay was not due to one or more of the points stated above. The applicant has contended that the key fact leading to such a delay was due to losing tracking of the case. This, in the applicant's view, is due to several adjournments and Covid –19. I think, the applicant may have reasons that are founded, but I do not see how that affected tracking of the case. Messiness, is a sign of negligence and leads to apathy. I therefore agree with the respondents that there has been no sufficient reason warranting the delay stated. Worse still, it is apparent in record, that the decision in Revision

No. 317 of 2019 was delivered on 28th August 2020. Present, was the first respondent's representative and the second respondent. This shows, losing track of the case, was not due to court adjournments and Covid -19.

Further, this application was filed on 24th November 2020, which is nearly three months from date of delivery. The applicant did not produce the court record/proceeding in Revision No. 317 of 2019 to show how and when losing the track started. It is taken that she does not even know. This period of delay is shockingly inordinate. The court takes the view that, the applicant was under obligation to account for the days of delay. In the circumstances, the applicant failed to advance good cause to justify extension of time to file notice of appeal. In the premises, this application lacks merit, it is dismissed accordingly. No order as to costs.



A. K. Rwizile

JUDGE

24.02. 2022