

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**  
**MISCELLANEOUS APPLICATION NO. 214 OF 2022**

**REAL HOPE VISION SCHOOL ..... APPLICANT**

**VERSUS**

**BHOKE MAKURU ..... RESPONDENT**

**RULING**

25<sup>th</sup> July & 12<sup>th</sup> August 2022

**Rwizile, J**

The applicant has asked this Court to extend time to file a notice of appeal to the Court of Appeal. In fact, the application originates from application No. 30 of 2020 that challenged the labour dispute No. CMA/DSM/TEM/736/18/10/19 which was referred to the Commission for Mediation and Arbitration (CMA).

The application was supported by the affidavit of Samuel Shadrack Ntabaliba, Advocate of the applicant but opposed by the counter affidavit of the respondent. Grounds advanced by the applicant are: -

- i. That the Honourable Biswalo Mganga grossly erred in law and facts by failing to evaluate impact of existence and nonexistence of the contract of employment.*
- ii. That there is an illegality in the order of Honourable Judge Biswalo Mganga.*

The hearing was done orally. The applicant enjoyed the service of Mr. Paul Peter, learned Counsel, the respondent on the other hand, was in the service of Mr. Marangu Lukombe, Personal Representative.

The advocate for the applicant submitted on the first point that the judgement was delivered on 27<sup>th</sup> August, 2021 and was supplied with the drawn order and proceedings. He stated that the principal officer of the applicant was sick and went upcountry, he was absent when the judgement was delivered. He stated further that, lawyers were not therefore instructed in time to file this application. He continued to argue that the Court of Appeal has an issue to determine as there was an error in holding that there was a contract when in fact it was not.

On the second point, the learned advocate submitted that there were illegalities in the judgement. He prayed; the application be granted otherwise, the applicant will be prejudiced.

On reply Mr. Masonga, submitted that the applicant failed to attach proof of sickness of the principal officer. He stated, that the applicant was given a chance to present his case but this application took long time to be filled and that they have not shown good reason for delay. He asked this court therefore, to dismiss the application.

In a rejoinder, the advocate for the applicant submitted that the principal officer of the applicant was sick. He added, the applicant came to Court upon receiving his instructions.

After going through parties' submissions and the pleadings, the Court has to determine *whether the applicant has shown sufficient reason for delaying to file notice of appeal.*

The law provides, the notice of appeal, should be filed to the High 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: -.

- (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 the decision against which it is desired to appeal.*

The law gives room for the part wishing to appeal but was late to do so, to apply under section 11(1) of the Appellate Jurisdiction Act [CAP 141 R.E. 2019] to the High Court to extent time to file a notice of appeal. It 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."*

This means, the High Court cannot just extend time whenever it wishes. It has to consider some factors before granting the extension of time. This is after the applicant has shown good cause for delay. A good cause for delay can be shown in different ways depending on the nature and circumstances of each case.

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 applicant submitted that delay was because of sickness of the principal officer of the applicant. This is what, according to the applicant, that led to late instructions.

From the records, there is no evidence that supports the allegations that the principal officer was sick and so delayed to instruct the lawyers. Further, it is in record that application No. 30 of 2020 was delivered on 27<sup>th</sup> August, 2021. This application was filed on 13<sup>th</sup> June, 2022. This shows there was a lapse of almost 10 months (290 days). The applicant was therefore to account for all days of delay. On this aspect, the applicant did not account for each day of delayed as was held in the case of **Daudi Haga v Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal of Tabora, (unreported), it was held that: -

*"A person seeking for an extension of time had to prove on every single day for delay to enable the Court to exercise its discretionary power."*

Also, 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), Court of Appeal laid down the principles to be considered before granting an extension of time:

- 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.*

From the foregoing, the applicant did not show diligence but looked so sloppy in prosecuting this application. This is perhaps why; it took a long time to file this application.

On the issue of illegality, it was stated that there was an error of law because the court held there was a contract when in fact there was none.

In the case of **Finca (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, 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"*

The illegality stated by the applicant's advocate is not on the face of the record, its determination goes to the merits of the case, this court has no such a mandate. From the foregoing, it is clear to me, that the applicant's delay was not only grounded on negligence but also the delay was shockingly inordinate. The application is therefore dismissed. I make no order as to costs.



**A.K. Rwizile**

**JUDGE**

**12.08.2022**

