

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

MISCELLANEOUS APPLICATION NO. 226 OF 2022

BETWEEN

SAAFA PLASTIC LIMITED APPLICANT

AND

YONA ONESMO & 70 OTHERS RESPONDENTS

RULING

Date of the last Order: 16/08/2022
Date of Ruling: 19/08/2022

B. E. K. Mganga, J.

When the application was called on for hearing, Mr. Alfred Rweyemamu, Advocate appeared and argued for and on behalf of the applicant while Mr. Yona Onesmo argued the application on behalf of his co-respondents.

In arguing the application, Mr. Rweyemamu, learned counsel submitted that applicant is seeking extension of time within which to file a Notice of Appeal so that she can appeal to the Court of Appeal and leave to appeal to the Court of Appeal. Counsel for the applicant advanced two

grounds namely; (i) illegality and (ii) technical delay. On illegality, Mr. Rweyemamu, submitted that respondents were supposed to file an application for execution, instead, they filed before CMA an application for clarification or computation of their entitlements.

On technical delay, Mr. Rweyemamu submitted that, applicant filed Civil Appeal No. 95 of 2018 before the Court of Appeal, but it was struck out on 22nd March 2022 because no leave was sought and granted prior to filing the said appeal. He went on that, on 08th June 2022, counsel for the applicant signed the affidavit in support of the Notice of Application and finally filed this application on 16th June 2022. When he was asked by the court as how many days passed from 22nd March 2022 to the date the Advocate sworn his affidavit, he replied that it is 78 days and conceded that these 78 days are not accounted for in the affidavit in support of the application. He conceded further that, eight (8) days passed after taking oath without filing the application and further that, these 8 days are also not accounted for. Further to that, counsel for the applicant conceded that in the Notice of Application, applicant did not cite any provision relating to filing of the Notice of Appeal or leave to appeal to the Court of Appeal. Mr.

Rweyemamu concluded his submissions praying that the application be granted.

On his part, Mr. Onesmo, arguing on behalf of his co-respondents, submitted that applicant is playing a delay tactic so that they (respondents) cannot enforce the award that was issued in their favour. He submitted further that; applicant has filed this application after she has become aware that respondents intends to attach her property to enforce the CMA award. Briefly as he was, Mr. Onesmo prayed that the application be dismissed.

This being an application for extension of time, I have been asked to exercise discretionary powers whether to grant it or not. I am alive to the principle that, in extension of time, courts should exercise their powers judiciously as opposed to capriciousness and that decisions must be based on materials placed before it for consideration. See [*Nyanza Road Works Limited v. Giovanni Guidon*](#), Civil Appeal No. 75 of 2020, CAT(unreported), [*MZA RTC Trading Company Limited v. Export Trading Company limited*](#), Civil Application No. 12 of 2015 (unreported) to mention but a few. In [*MZA RTC's case*](#)(supra) it was held: -

*"An application for extension of time for the doing of any act authorized ...is on exercise in judicial discretion... judicial discretion is the exercise of judgment by a judge or court **based on what is fair, under the circumstances and guided by the rules and principles of law ..."***

The circumstances referred to in the quoted paragraph, in my view, are the causes of the delay. In the application at hand, applicant has failed to disclose the cause for the delay. In my view, without disclosing the cause for the delay, the court cannot properly exercise its discretionary powers to extend time, otherwise, time will be arbitrary extended. It is a trite law that in any application for extension of time, applicant must adduce sufficient cause for the delay as it was held in the case of **Salum Sururu Nabhani v. Zahor Abdulla Zahor**, [1988] T.L.R. 41, [*MZA RTC's case*](#)(supra). Applicant has failed to meet this criterion for the court to extend its helping hand in her favour.

It is a settled law also that, in extension of time, applicant must account for each day of the delay as it was held in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, CAT (unreported). In **Mashayo's case** (supra) the Court of Appeal held that: -

"...Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

In the application at hand, as correctly conceded by Mr. Rweyemamu, applicant has failed to account for delay from 22nd March 2022, the date Civil Appeal No. 95 of 2018 was struck out by the Court of Appeal for want of leave to 16th June 2022, the date she filed this application. There are 86 days that applicant has failed to account for. This failure, tells all, that, applicant chose to file this application only at the time she thought she can do so. The courts, in my view, are there to help the watchful and not for those who are sleep.

It was submitted by counsel for the applicant that there was technical delay. As much as I agree that technical delay is one of the grounds sufficient for the court to extend time, that cannot be an open cheque for applicants to come to the courts as they wish and without accounting for the delay. I therefore, in the circumstances of this application, reject that ground.

It was submitted by counsel for the applicant that there is illegality in the award because, instead of filing an application for execution, respondents went back to CMA for computation of the amount each one was entitled to. In my view, applicant intends to challenge the decision of this court before the Court of Appeal and not the CMA award. Therefore, in

my view, she was supposed to point out the illegality contained in this court's decision and not in the CMA award. In other words, applicant has failed to show that there is illegality in the Ruling that was delivered by Hon. Nyerere, J (as she then was) on 6th April 2018. It is a settled law that, for illegality to be a ground for extension of time, it must be apparent on the face of the record. See [Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christians Association of Tanzania](#), Civil Application. No. 02 of 2010 CAT (unreported). As to what amounts to an apparent error on the face of the record, was stated by the Court of Appeal in the case of **Chandrakant Joshubhai Patel v. Republic** [2004] TLR 218 that: -

"An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions..."

As pointed hereinabove, the alleged illegality namely, appearance of the respondents to CMA for computation of the amount each was entitled, instead of filing application for execution, is not an apparent error on the face of the record. I am of that view, but without deciding, because it can be argued that there was a slip of pen on the side of the arbitrator to make computation and that due to that slip of pen, the arbitrator, in terms of

Rule 33 of the Labour Institutions (mediation and Arbitration) Rules GN. No. 67 of 2007 has power to make clarification, otherwise, it could have been impossible for the award to be executed. With that possibility, it cannot be said that there is an apparent error on the face of the record. I therefore reject this ground too.

For the foregoing, I find that the application is not merited, and I hereby dismiss it.

Dated at Dar es Salaam this 19th August 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 19th August 2022 in chambers in the presence of Alfred Rweyemamu, Advocate for the applicant and Yona Onesmo, one of the respondents.



B. E. K. Mganga
JUDGE