

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 438 OF 2021

(Arising from the Ruling and Orders of this Hon. Court in Revision No. 18 of 2012 Hon. R.M Rweyemamu, J delivered on 15th March)

CMA CGM TANZANIA LIMITEDAPPLICANT

VERSUS

JUSTINE BARUTI.....RESPONDENT

RULING

K. T. R. MTEULE, J.

11th August 2022 & 15th September 2022

This is an application for extension of time to allow the applicant to lodge notice of appeal against the judgement of this Court (Hon. Mashaka J) dated 23 May 2018. Prior to this application, there was an Appeal which was lodged in the Court of Appeal for the same purpose vide **Civil Appeal No. 23 of 2020** which was struck out on 27 October 2021 due to a defective notice of appeal.

In the affidavit in support of this application, the applicant tried to account for the delays she delayed lodging the appeal, which seems to be centered on the bureaucratic process of getting court documents including supply of improper documents which led to the striking out of the appeal which was already lodged in the Court of Appeal. For clarity,

I will summarize hereunder the events contained in the affidavit which according to the applicant, were taking place to result the delay. The events are as follows:

- **23 May 2018** - Delivery of judgement and decree in Labour Revision Application No. 28 of 2017 (**Exhibit CGM – 1**)
- **1st June 2018** – lodgment of the notice of appeal and request for copies of judgment and decree vide a letter dated 31st May 2018 in High Court Labour Division Dar es Salaam (**Exhibit CGM – 2 and Exhibit CGM – 3**)
- Vide a letter dated **23 May 2019** - High Court Labour Division Tanga invites the applicant to collect copies of judgment and decree (**Exhibit CGM – 4**)
- **24 May 2019** Bowmans write to HC Lab Div. Tanga to request some other missing documents (**Exhibit CGM – 5**)
- Certificate of delay dated **11th December 2019** and complete set of documents issued to the applicant (**Exhibit CGM – 6**)
- Time from **31st May 2018** to **11th December 2019** excluded from time count.
- **5th February 2020** – memorandum of appeal lodged in the Court of Appeal

- **27 October 2021** Court of Appeal struck out the Appeal for being supported by certificate of delay issued by High Court Labour Division Tanga instead of Dar es Salaam. (**Exhibit CGM – 10**)
- **28 October 2021** – request for copied of the order of the court lodged to the Registrar of the Court of Appeal (**Exhibit CGM– 1**)
- **5 November 2021** – copies of the Court of Appeal order supplied to the applicant
- **10th November 2021** – Lodgment of this application seeking for extension of time to refile the appeal to the court of appeal.

In the counter affidavit, the respondent disputed the material facts deponed by the applicant. Particularly, the respondent disputed the fact that the Court of Appeal received the letter seeking for the copies of judgment on **29 October 2021**. According to the counter affidavit, the copies were ready for collection since **28 October 2021** while this application was lodged on **10 November 2021**. It was deponed in the affidavit that the time between 1st June 2018 when the High Court delivered the impugned judgement to 19th November 2021 when this application was lodged is 3 years and four months which is inordinate.

The Application was heard by written submissions. The applicant was represented by Advocate Waziri Mchome from Misnak Law Chambers

while the respondent was represented by Advocate Mashaka Ngole from Mashaka Ngole Advocates.

In the applicant's submission, responding to assertion of time being inordinate, Mr. Mchome submitted that the former appeal in the court of appeal was timely filed. Citing the case of **Nassoro Abubakar Hamis versus Wakfu and Trust Commission of Zanzibar & Others, Civil Appeal No. 245 of 2020, Court of Appeal of Tanzania at Zanzibar, (Unreported)**, he submitted that the court has a bigger share of blame when it issues documents containing errors.

Mr. Mchome called the delayed period a technical delay. To support this contention, he cited the Court of Appeal decisions in **Fortunatus Masha versus William Shija, (1997) TLR 154, 156**; Salvand K. A Rwegasira versus China Henan International Group Co. Limited, Civil Reference No 18 of 2016 Court of Appeal at Dar es Salaam (unreported) page 10 and Bank M (Tanzania Limited versus Enock Mwakyusa, Civil Application No 520/18 of 2018, Court of Appeal of Tanzania at Dar es Salaam (Unreported) page 9 – 10.

Submitting on the 8 days delay in filing this application from the date the order of the Court of Appeal was delivered, Mr. Mchome refuted the assertion that 8 days amounts to inordinate delay. In his view, the

applicant requested for the said ruling just the next day after the order and spent the rest of the time to consult the lawyer and prepare the application. He cited the case of **Damari Watson Bilinga versus Innocent Sangano, Miscellaneous Civil Application No 30 of 2021, High Court of Tanzania, Kigoma**, where 12 days were considered to be reasonable time in circumstances similar to the instant one.

While considering the reply to the applicant's submissions, I noted two documents containing reply submissions filed by the Respondent. To avoid confusion, I have decided to rely on the one which was filed on 27th July 2022 and disregard the other one which was filed on 12 August 2022 which was out of time. The deadline for the respondent to file his submissions was on 27th July 2022.

In the respondent's submissions, Mr. Mashaka Ngole assigned a definition to what constitute an inordinate delay. According to him, it mean a delay where a party has no justification to demonstrate or make account of the factors which prevented the party from taking a step. In his view.

Further he considered the act of lodging the notice of appeal in a wrong registry as an unjustified delay. Mr. Mashaka identified a period between

28th October 2021 to 10th November 2021 which is 8 days as inordinate delay.

Submitting on the unaccounted 8 days, Mr. Mashaka proceeded to insist that it is mandatory to account each day of delay. He cited the case of **Charles Pantaleo Kimboka versus Abbas Mussa Kitoi, Civil Application No. 71/71 pf 2019** where the Court of Appeal insisted the importance of accounting for even a single day of delay.

The Respondent blamed the Applicant for having lodged his notice of appeal and application to be supplied with copies of certificate of delay in Tanga registry. In his view, it was the applicant who misled the process, hence the case of **Nassoro Abubakar** cited by the applicant is not relevant in this matter as in the instant case the misleading action was initiated by the applicant.

Having gone through the parties' submissions, I see that the main contention lies on the days the respondent claims to have been not accounted for. I have noted Mr. Mchome's definition he assigned to inordinate delay. Although I could not see the source of that definition, I see it making sense. The state of inordinate depends on the reasonability of the account of the factors which caused the delay. In this respect, each case needs to be considered according to its

circumstances, therefore it is difficult to have a strictly prescribed features of inordinate delay.

For the purposes of this matter, it is not disputed that generally the matter is delayed for more than 3 years and that such delay is inordinate. There are 8 days which raised major concern on the part of the respondent's counsel. These are days which lapsed between 28th October 2021 when the Court of Appeal struck out the appeal to 10th November 2021 when this application was lodged. Mr. Mashaka does not agree with the applicant that 8 days should have been used for consultation between the applicant and his counsel and prepare the application. In his view, there is no sufficient account of the days hence this is an inordinate delay. In assessing as to either the 8 days were inordinate delay, I had to borrow a leaf from the case of *Damari Bilinga supra* as cited by Mr. Mchome. I agree the circumstances in that case were similar to the instance circumstances. The count of days began from the date when the Applicant had already obtained all the documents and it was found that 12 days were reasonable for preparation of the appeal.

I share the same view, that use of 8 days to prepare and lodge an application is not inordinate. In this respect the respondent assertion

that 8 days to prepare application amounts to inordinate delay is not well founded.

Regarding to having the matter dealt with in a wrong registry, I have taken note of the respondent's blame upon the applicant for lodging the notice of Appeal in Tanga registry instead of Dar es Salaam registry. Mr. Mchome claimed to have lodged the said notice of appeal in Dar es Salaam registry and not Tanga registry, but response came from Tanga registry. I have looked at the notice of appeal and the letter requesting for the copies of judgment and decree (**Exhibit CGM – 2 and Exhibit CGM – 3**) and noted that they are actually addressed to High Court, Labour Division Dar es Salaam Registry. They were addressed to the High Court Labour Division Dar es Salaam. Surprising the response was from High Court of Tanzania Labour Division at Tanga. Myself, I failed to understand how this came to happen. Actually, this response was the beginning of the confusion since all other correspondences changed to address to Tanga registry. In my view, the court was the first misleading point. It has a share of blame. The case of Nassoro Abubakar cited supra by the applicant, bears relevance at this point. It was held:-

"Be it as it may, in the circumstances of the instant appeal, we respectively hold that the trial court which issued the defective court decree has a big

share of blame for the mistakes committed in the decree."

Nevertheless, the above holding does not exonerate the applicant from being responsible with his share of blame. A counsel has duty to ensure that there are proper documentation to accompany a motion brought to court. However in the words of Justice Mwambegele, JA in the case of Bank M cited supra, this mistake being technical, it is already punished by the striking out of the application. He stated at page 10 of the decision:

"I subscribe to the view taken by the Court in the above cases. The applicant Bank, having been duly penalized by having Civil Appeal No. 109 of 2012 struck out by the Court and the High Court (Labour Division) dismissing Miscellaneous Application No. 133 of 2017, the same cannot be used yet again to determine the timeousness of applying for filing the fresh Notice of Appeal in a bid to file a fresh appeal. On the authority of the decisions of the Court cited, that was an excusable technical delay on the part of the applicant which constitutes good cause under rule 10 of the Rules, under which the notice of motion has, inter alia, been taken out, to grant the order sought."

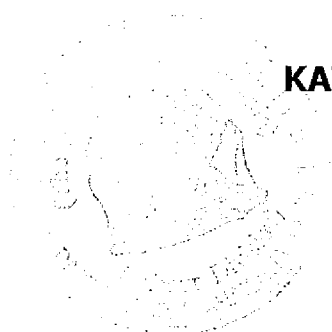
From the above reason, I call the error of registry confusion a human error which still falls under technical delay covered by the above

principle for having already being punished by the striking out the the appeal.

From brief series of events initially summarized in this ruling, I could not see an idle time in this matter. It is clear that the applicant has been in court corridors since the date when the impugned decision was delivered. The 8 days of delay were explained to be used to prepare this application which in my view is a reasonable time, not inordinate and that the confusion of registry is found to be a technical delay.

In the above circumstances, it is my finding that the applicant has adduced sufficient grounds to warrant grant of the sought extension of time. Consequently, this application is granted, and the applicant is allowed to lodge the notice of appeal and apply for copies of judgment and decree out of time in respect of Revision Application No. 28 of 2016 from this court. The said notice of appeal and letter of application for the copies to be made within 7 days from the date of this decision. No order as to costs. Each party to take care of its own costs. It is so ordered.

Dated at Dar es Salaam this 15th Day of September 2022



KATARINA REVOCATI MTEULE

JUDGE

15/9/2022