

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

**MISCELLANEOUS APPLICATION NO. 276 OF 2022**

*(Arising from ex parte Judgment delivered on 7/2/2022 by Hon. S.M. Maghimbi, J in Labour Revision No. 456 of 2020 at High Court Labour Division)*

**MSAMA PROMOTION CO. LIMITED ..... APPLICANT**

**VERSUS**

**THEOPISTA E. MAZIKU ..... RESPONDENT**

**RULING**

*Date of the last Order: 10/10/2022*  
*Date of Ruling: 27/10/2022*

**B. E. K. Mganga, J.**

Applicant has filed this application under Rule 24(1), 2(a),(b),(c) and (d) and Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 read together with section 94(1)(b)(i) of the Employment and Labour Relations Act[ Cap.366 R.E. 2019] seeking the court to extend time within which she can set aside ex parte judgment issued by this court on 07<sup>th</sup> February 2022 (Hon. Maghimbi, J) in revision application No. 456 of 2020.

When the application was called on for hearing, Mr. Nixon Tugara, learned Advocate appeared and argued for and on behalf of the applicant, while Mr. Juvenalis Motete, Advocate appeared and argued for and on behalf of the respondent.

In his submissions, Mr. Tugara submitted that Revision No. 456 of 2020 was heard *ex parte* and that applicant was not served with the application. He submitted that on 11<sup>th</sup> July 2022, applicant became aware of the *ex parte* judgment issued by this Court at the time when respondent was intending to file an application for execution and that, applicant filed this application on 19<sup>th</sup> July 2022. In his submissions, counsel for the applicant conceded that applicant has not accounted for the delay from 11<sup>th</sup> July 2022 to 19<sup>th</sup> July 2022. He went on that, applicant was not served with the application, which is why, she failed to enter appearance. Counsel for the applicant prayed that the application be allowed so that she can be heard.

On his part, Mr. Motete, counsel for the respondent submitted that, applicant was served with application No. 456 of 2020, but willfully failed to enter appearance. Counsel submitted that the *ex parte* judgment of this Court was delivered on 07<sup>th</sup> February 2022 and the same shows that

applicant was served. Counsel went on that; applicant filed this application on 19<sup>th</sup> July 2022. Counsel for the respondent submitted further that, applicant's argument that applicant became aware of the exparte judgment on 11<sup>th</sup> July 2022 when respondent was intending to carry out execution is not true because respondent has not filed execution application. He further argued that applicant did not state how she established that respondent was intending to file execution. Mr. Motete went on to submit that applicant annexed the said exparte judgment to her application without explaining how and when she was served with that judgment and decree. He concluded that applicant became aware of existence of the exparte judgment from the date the decision was made.

Counsel for the respondent also submitted that applicant did not account for the delay from 11<sup>th</sup> July 2022 to 19<sup>th</sup> July 2022. Counsel went on that, applicant sworn an affidavit on 12<sup>th</sup> July 2022 but stayed with the application for seven (7) days and filed the application on 19<sup>th</sup> July 2022. Mr. Motete cited the case of ***Oswald Masatu Mwizarubi v. Tanzania Fish Processors Ltd***, Civil Application No. 13 of 2010, CAT (unreported) and ***Dan O'bambe Iko (By William Dan Iko as Administrator of the Estate) v. Public Service Social Security Fund & Another***, Civil

Application No. 182 of 2005, CAT (unreported) to support his submission that for extension of time to be granted, there must be good cause in the affidavit. Counsel for the respondent concluded that applicant was not diligence from 11<sup>th</sup> July 2022 to 19<sup>th</sup> July 2022 and prayed the application be dismissed.

In rejoinder, Mr. Tugara, learned counsel reiterated his submission in chief and prayed the application be allowed.

As pointed herein above, applicant has filed this application seeking extension of time within which to file an application to set aside the exparte judgment of this court. In the Notice of Application, applicant cited Section 94(1)(b)(i) of the Employment and Labour Relations Act [ Cap.366 R.E. 2019] which relates to reviews and revision of arbitrator's award. It is my view therefore, that applicant has not properly moved the court. In the Notice of Application, applicant cited also Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 that relates to extension of time. Based on the overriding principle, I took an option to proceed with the application because the Rule relating to extension of time was cited. The said Rule requires applicant to show good cause as to why extension of time should be granted. In the application at hand, applicant did not show good cause

for extension of time for the application to be granted. I am therefore inclined to the submissions by counsel for the respondent that applicant was supposed, by an affidavit, to adduce sufficient cause for the delay as it was held in the case of ***Oswald Masatu Mwizarubi V. Tanzania Fish Processors Ltd***, Civil Application No. 13 of 2010, CAT (unreported) and ***Dan O'bambe Iko (By William Dan Iko as Administrator of the Estate) V. Public Service Social Security Fund & Another***, Application No. 182 of 2005, CAT (unreported).

In the affidavit in support of the application, applicant deposed that she was not served with the application and that was also the argument of her counsel during hearing of this application. The argument that applicant was not served, in my view, is a ground to be advanced in the application to set aside the said *ex parte* judgment and not in the application for extension of time. In the application for extension of time, applicant is required to adduce sufficient reason for the delay of which, as I have pointed hereinabove, she has failed. More so, applicant attached the copy of the *ex parte* judgment to her application but did not state as to how and when she came into possession. It was claimed that she came aware of the said *ex parte* judgment when respondent was about to file execution

application. I agree with submissions by counsel for the respondent that applicant has failed to explain as to when she came into possession of the impugned judgment because there is no execution filed by the respondent. Further, she failed to explain as to when and how she became aware that respondent is about to file execution application. The argument that applicant became aware of the judgment at the time respondent was intending to file execution is very vague because, in absence of execution application, it cannot be established as to when she became aware. That being the position, I take that applicant was aware long time ago but took no action, which is why, she has failed to disclose the date she was served with the judgment.

It has been held several times by this court and the Court of Appeal that, in extension of time, applicant must account for each day of the delay even if it is a single day. See. **Sebastian Ndaula vs. Grace Lwamafa**, Civil Application No. 4 of 2014, CAT (unreported), **Joseph Raphael Kimaro & Another v. Republic**, Criminal Appeal No. 54/02 of 2019, CAT (unreported) and [\*Elias Kahimba Tibendalana vs. Inspector General of Police & Attorney General\*](#), Civil Application No. 388/01 of 2020 CAT (unreported) to mention a few. During submissions, counsel for the

applicant conceded that applicant did not account for the delay even from 12<sup>th</sup> July 2022, the date the affidavit in support of this application was deponed to 19<sup>th</sup> July 2022 the date this application was filed making almost seven days.

That said and done, I hereby dismiss this application for want of merit.

Dated in Dar es Salaam on this 27<sup>th</sup> October 2022.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 27<sup>th</sup> October 2022 in chambers in the presence of Nixon Tugara, Advocate for the applicant and Theopista Maziku, the respondent.



B. E. K. Mganga  
**JUDGE**