

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

MISC. LABOUR APPLICATION NO. 268 OF 2022

BETWEEN

DSM INSTITUTE OF TECHNOLOGY – SACCOS LTD APPLICANT

VERSUS

DAUDI GODLUCK SOLLO RESPONDENT

RULING

S.M. MAGHIMBI, J:

The present application was made under the provisions of Section 94(1) (e) of the Employment and Labour Relations Act, Cap. 366 R.E 2019 ("ELRA"), Rules 24(1), 24(2)(a), (b), (c), (d), (e), (f), 24(3)(a), (b), (c), (d) and Rule 56(1), (2), (3) of the Labour Court Rules G.N No. 106 of 2007 ("the Rules"). The applicant is seeking for the following orders:

1. That this Honourable court be pleased to grant extension of time for the applicant to file revision application out of time as per the order of this Honourable court by Hon. Maghimbi, J dated 18th February, 2022.
2. That this honourable court be pleased to make any other order that may appear to be just and convenient in the circumstances.

The application is supported by an affidavit of Ms. Kambibi Kamugisha, applicant's Advocate sworn on 04/07/2022. On the other

hand, the respondent challenged the application through his counter affidavit dated 16/08/2022. The application was argued by way of written submissions. Before this court, the applicant enjoyed the service of Ms. Regina Kiumba, Learned Counsel whereas Mr. Ashery Stanley, Learned Counsel appeared for the respondent.

Arguing in support of the application, Mr. Swenya submitted that after delivery of the CMA's award, the applicant timely filed Revision Application No. 126 of 2021 but the same was struck out with leave to refile within 14 days. That the application was struck out in the absence of the applicant's advocate on the ground that the same was defective for failure to comply with mandatory provision of the law. Mr. Swenya submitted that it is a settled principle of law that in order for the court to grant extension of time, the applicant must adduce sufficient reason for the delay. That what constitutes sufficient reason is left to the court's unfettered discretion and that the court will accept either reason that prevented the applicant from taking essential step in time or why the intended application for revision should be allowed to proceed out of time. To support his submission, he cited the court of appeal case of **Regional Manager, Tanroads Kagera Vs. Ruaha Concrete Company Limited, Civil Application No. 96/2007** (unreported) and the case of **Tanzania Revenue Authority Vs. Tango Transport Co.**

Ltd and Tango Transport Co. Ltd Vs. Tanzania Revenue Authority, Consolidated Civil Appeal No. 04 of 2009 (unreported).

Mr. Swenya continued to submit that the delay in this application is merely technical and is not too long. That the reasons for the delay to file the present application are deponed under paragraph 11, 12, 13, 14, 15 and 16 of the applicant's affidavit. He went on submitting that the ruling was delivered in the absence of the applicant's advocate because she lost track of the matter; she was informed that the ruling was delivered on 18th February, 2022 and copy of the same was supplied to her on 17th March, 2022. He said thereafter, on 18th May 2022 the applicant filed an application for extension of time which was also struck out for being omnibus and that is when the applicant filed the present application.

Mr. Swenya submitted that the delay in filing this application was occasioned by human oversight which was beyond the applicant's control as such, to warrant this court to extend time within which to file an application for revision. He further submitted that the impugned award contains illegalities which warrant consideration on revision pointing out that in the CMA F1, the respondent claimed for unfair termination while the Arbitrator on the award ruled that there was

breach of contract. That the illegality is based on the cause of action because unfair termination cannot be equated with breach of contract, a position which was stated in the case of **Jordan University College Vs. Flavia Joseph (Labour Revision 23 of 2019) [2020] TZHCLD 3822 (08 December 2020)**. In the upshot he urged the court to grant the application.

In reply, Mr. Bilali contended that the reason of the applicant's advocate loss of track of the case is unjustifiable and it clearly shows apathy, negligence and lack of due diligence on the part of the applicant's advocate which cannot be a justifiable ground for the grant of extension of time sought. He pointed out that the ruling in Revision No. 126 of 2021 was issued on 18th February, 2022 but there is no proof that the applicant went to the court on 11th March, 2022 except for the letter indicated to be written on the referred date but submitted to the court on 17th March, 2022. He argued that there is no reason adduced for failure to take necessary steps from 11th March, 2022 to 17th March, 2022. He argued further that although it was submitted that the applicant's advocate received instruction to file the application for extension of time on 18th March, 2022; but she filed the same on 18th May, 2022 and no reason has been advanced for such delay of sixty one days.

It was further submitted that since 18/03/2022, the applicant could have filed the application to court but he deliberately and purposely acted negligent and with sloppiness and filed the application on 18/03/2022. He added that since 30/06/2022 to the 08/07/2022 when the applicant filed this application, almost 7 days lapsed and no reason has been advanced for the delay. On the requirement to account for each day of the delay, the Counsel cited the decision of the Court of appeal case of **Finca T. Ltd & Another vs Boniface Mwalukisa (Civil Application 589 of 2018) [2019] TZCA 93 (15 May 2019)**.

Mr. Bilali went on submitting that lack of due diligence and negligence was considered by the Court of appeal to deny extension of time in the case of **William Shija Vs Fortunatus Masha (Civil Application 6 of 1997) [1997] TZCA 20 (25 August 1997)**. As to the issue of illegality alleged, it was submitted that the cited case of **Jordan University Collage** (supra) is irrelevant to the case at hand because it concerned grounds for revision and not extension of time as alleged. He added that in this case, the applicant has not explained how the illegality is of sufficient importance for this court to grant extension of time. He stated that the illegality complained should be on the face of record and not drawn on a long argument. To support his submission, he referred this court to several decisions including the decision of the

Court of Appeal in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Case No. 46 of 2006** (unreported).

He therefore urged the court to dismiss the application for lack of merits.

After considering the arguments of both counsels, the task is for me to see whether the applicant has adduced sufficient reason(s) for the delay to warrant the grant of extension of time sought. Pursuant to the provisions of Rule 56(1) of the Rules, this court is vested with powers to extend time upon good cause being shown unless the court is precluded from doing so by any written law. What amounts to sufficient or good cause has been discussed in a number of cases including the decision of the Court of Appeal in the case of **John Mosses and Three Others Vs The Republic, Criminal Appeal No. 145 of 2006** while citing with approval the position of that same court in the case of **Elias Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005** where Mandia J.A (as he then was) held that:-

"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected by the applicant is to show that he was

prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part”.

In the application at hand, the applicant moved the court to extend time within which to file revision application in respect of labour dispute No. CMA/DSM/ILA/145/2020/154/20 which was delivered on 26/02/2021. The applicant's reason for the delay is at all this time, the application was in court corridors and that after delivery of the impugned award, he filed the application for extension of time timely but the same was struck out for being defective. The application was struck out in the absence of the applicant's advocate. At this point, the applicant's arguments show that his advocate acted negligently in pursuing the matter as rightly submitted by Mr. Bilali.

As per the records, the alleged ruling was delivered on 18/02/2022 but the same came to the knowledge of the advocate on 10/03/2022 after he received a call from his client. From 10/03/2022 the advocate again took one month and 9 days to file an application for extension of time which was also struck out on 30/06/2022 for being omnibus. Thereafter, the applicant filed the present application on 08/07/2022 for extension of time.

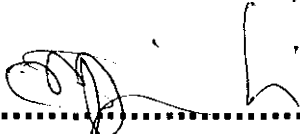
The circumstances narrated above shows lack of diligence to prosecute the matter on the part of the applicant's advocate. In my view this case has been filed as a delaying tactic considering there is an execution application which has been filed in this court. If a party to a case is really interested to pursue his/her matter he has to act immediately from one action to another.

On the issue of illegality raised by the applicant, is not apparent on the face of records, rather the applicant moves the court to determine the merits of her case before the same is lodged in court. This is contrary to the position held in the case of **Lyamuya Construction** (supra).

In conclusion, I find the applicant has failed to adduce sufficient reason for the delay to grant the application at hand. Therefore, he cannot benefit from the provisions of Rule 56(1) of the Rules. Consequently, this application is dismissed for want of merits.

Dated at Dar es Salaam this 10th day of October, 2022.




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S.M. MAGHIMBI
JUDGE