

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS APPLICATION NO. 434 OF 2022

HARUNA SELEMANI MGUNDA.....1ST APPLICANT
SOSPETER YONGO MPENE.....2ND APPLICANT
BOAZ DANIEL BAKILLA.....3RD APPLICANT
AMBINDWILE S. SHEHE.....4TH APPLICANT
ABUSHEHE S. SHEHE.....5TH APPLICANT
SALEHE M. MSOFI.....6TH APPLICANT
EDITHA J. BATONDANA.....7TH APPLICANT
INNOCENT G. UISSO.....8TH APPLICANT
ADAM K. MHENI.....9TH APPLICANT
ALLI ABDALLAH NGWEMBE.....10TH APPLICANT
BAWILI ANDREA LUTANA.....11TH APPLICANT
DEODATUS K. MAKWINYA.....12TH APPLICANT
KAYNDINES ERASTO.....13TH APPLICANT
SELEMANI KIPANDE.....14TH APPLICANT
HELENA A. CHIWAMBA.....15TH APPLICANT
RUGE M. MANGARI.....16TH APPLICANT
PHILIMON MZOLA..... 17TH APPLICANT
MWITA JOSEPH WAMSEGI.....18TH APPLICANT
KIKONYO M. MPOTO.....19TH APPLICANT
ABDUL HAMIS.....20TH APPLICANT
FRANKO ANYITIKE MWANTINGO.....21ST APPLICANT

JOSEPHAT MALECHA..... 22ND APPLICANT

KIBUNDU M. NONDO.....23RD APPLICANT

ALFANI SALUM SESALA.....24TH APPLICANT

SALUM M. KIENDAYAGE.....25TH APPLICANT

GABRIEL MAGOMBA.....26TH APPLICANT

SELEFINI SEVERINI MBUYA.....27TH APPLICANT

SELEMANI RAMADHANI NJAU.....28TH APPLICANT

EDINA G.MKUMBWA.....29TH APPLICANT

GODSON E. MBOYA.....30TH APPLICANT

GADAFI H. KAHAMBA.....31ST APPLICANT

MAONA SAID MFUGALO.....32ND APPLICANT

DASTAN PASCAL.....33RD APPLICANT

ALLY SAID ILUNDE.....34TH APPLICANT

SAID S. HAULE.....35TH APPLICANT

SELESTINE PETER KOBERO.....36TH APPLICANT

BRIGHT PETER RUBEN.....37TH APPLICANT

SEIF R. NASSIR.....38TH APPLICANT

FILIBERT VALERI.....39TH APPLICANT

FRANCIS NGATUNGA.....40TH APPLICANT

RICHARD MTANGIRA.....41ST APPLICANT

ALLY M.MWIME.....42ND APPLICANT

BARNABASI RETENGANO MAHUVI.....43RD APPLICANT

CHARLES GIDION KADUMA.....44TH APPLICANT

JUMANNE ATHUMANI KIJANGWA

(JANETH MASSAWE- ADMINISTRATOR).....45TH APPLICANT
FATUMA IBRAHIM MACHA.....46TH APPLICANT
SESILIA A. KWAYU.....47TH APPLICANT
ABDALLAH ALLY KUNDEMBA.....48TH APPLICANT
JOSEPHINE MARCUS MTOYA.....49TH APPLICANT
BERNARD CLEMENT.....50TH APPLICANT
MRISHO HABIBU MRISHO.....51ST APPLICANT
FRANSISCO J.NDYANABO.....52ND APPLICANT
SALUM KIPINGO SALUM.....53RD APPLICANT
JOHNBOSCO B. PONELA.....54TH APPLICANT
MTORO RAMADHANI BONDOGERA.....55TH APPLICANT
HAMIDU MUNICIPAL COUNCIL.....56TH APPLICANT

VERSUS

ILALA MUNICIPAL COUNCIL.....RESPONDENT

RULING

30th May – 01st June, 2023

OPIYO, J

This application is for extension of time for the applicant to file review of the decision by Wambura, J. in Revision No. 179 of 2019 dated August, 2019. The application is supported by the applicants' affidavit stating grounds for their application to be injustice caused by unreasonable proceedings and illegality of the proceeding



Applicants were represented by Mr. Paschal Temba, Personal Representative whereby Lemelo Francis and Hussein Kambi, State Attorneys appeared for the Respondent.

It is a common understanding that in such application the major factor for granting extension of time is upon the applicants presenting sufficient cause for delay. In this matter, sufficient cause for delay raised by Mr. Temba was that applicants were ignorant of what was going on in court as their leaders who were attending court denied them relevant information together with their advocate. It is after they became aware when brought this application on 04/11/2022. He then prayed for the prayer to be granted.

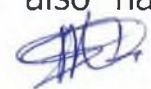
The counsel for the respondent Mr. Francis objected the application by submitting that applicants have not accounted for 1170 days of delay which are from 01st August, 2019 when their application No. 179/2019 was dismissed until 04th January, 2022. He stated that in their affidavit they have not shown what they were doing for that long to pursue the matter. He cemented his point by referring to the case of **Dar es Salaam City Council vs S. Group Security Co. Ltd**, Civil Appl. No. 232 of 2015 at Pg



7 of the decision paragraph 2 where it was decided that one need to account for each day of delay.

He continued that the advocate is a representative of the parties and so he is attending the proceedings on behalf of his clients, so whenever was done in his presence is binding on them as it was done in their presence. He added that applicants have failed to identify who the leaders were among those who are not in this matter. Such failure adds to the difficult of determining the authenticity of the applicants' information, he argued. He then prayed for the application to be dismissed for lack of merits.


In rejoinder Mr. Temba submitted that applicants have shown the reason for not making application in time which is not being aware of the outcome of the matter. For him such ignorance covers the reason as well of accounting for reach day of delay. He added that, the case cited by Mr. Francis is not relevant in this case as it was filed by a non-existent person, while in this case the parties are in existenc. He continued that when the order to dismiss the application was made none of the applicants were in attendance. He submitted further that the respondents also have not



shown if they will be prejudiced by granting the application. Consequently reiterate applicants' prayer made in chief.

Parties' submissions have been painstakingly perused, the court has been given a task to determine whether the applicant has adduced sufficient reason to warrant grant of the application. On any matter of delay sufficient reason has to be adduced causing the delay. Applicants stated that their advocate did not tell them about the progress of the case. This falls short of sufficient cause based on what was stated in the case of **Lim Han Yun and Another v. Lucy Theseas Kristensen**, Civil Appeal No. 219 of 2019, CAT cited in the case of **Salome Kahamba vs Siril Augustine Mallya**, Miscellaneous Civil Application No. 557 of 2021, HC at DSM at page 9 it was held that: -

"The appellants cannot throw the whole blame on their advocates. We think that a party to a case who engages the services of an advocate, has a duty to closely follow up the progress and status of his case. A party who dumps his case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and status of his case."



Based on the holding above the current applicant who are fortunately so many cannot through blame for their delay entirely on their advocate as each one of the them had an obligation to make follow up on the progress of the matter. If the delay was of a short period, at least it can be tolerated that the advocate may have overlooked the matter and was still finding time to inform the parties. Probably in the circumstances they could have few days to account for. In such applications as noted above applicants had to account for each day delayed. In the instant case the total number of the days delayed is 1170. This is extremely inordinate and the applicants have not account for any day so as to show cause of their delay. In the case of case of **Daudi Haga vs 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."

Applicants are the ones who engaged the advocate to deal with their case but, the matter stayed unattended for 1170 days for their failure to make follow up. Thus, the days remain unaccounted for. This proves that applicants had no sufficient reason for their long delay.

The illegality pleaded has not been explained by their personal representative and so the court cannot assume facts alleged to show illegality. In the I find this application to be devoid of merit and the same is hereby dismissed. I make no order as to costs, this being a labour matter.



M.P. OPIYO,

JUDGE

01/06/2023