

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 99 OF 2023

BETWEEN

PHILIMON ELIAS KANUT APPLICANT

VERSUS

INLAND TRANSPORTERS (T) LTD. RESPONDENT

RULING

Date of last Order: 19/07/2023

Date of Ruling: 20/07/2023

MLYAMBINA, J.

The issue which has arisen for consideration in this Labour Revision Application necessitates a bird's eye view on the legal position of the Court on the underlying grounds of extension of time. The key factor advanced by the Applicant is that of attending to a traditional Practitioner (herbalist) after falling sick. Primarily, the Applicant faults the Arbitrator from the Commission for Mediation and Arbitration at Dar es Salaam (herein CMA) for erring in law and facts by dismissing the application for extension of time while the Applicant adduced sufficient reason of attending clinic before a traditional herbalist who could not issue any medical certificate.

The Applicant through Personal Representative one Edward Simkoko and the supporting affidavit sworn by the Applicant contends that he was sick since 1st September, 2021.

It was the major contention of the Applicant that; upon being sick, he was attending natural treatment before a traditional practitioner where he could not get any certification. Thereafter, from February, 2022, the Applicant was attending clinic at Amana Regional Referral Hospital where he was diagnosed and found with *eczema herpeticar*, treated with various medications.

The Applicant, therefore, prayed for this Court to grant the application on account of the stated reason and that the Respondent won't be prejudiced anyhow if the application is granted.

In response, Counsel Willington Rwabinyasi for the Respondent opposed the application on reason that the Applicant did not adduce sufficient reason and did not account for each day of delay.

It was the contention of Counsel Willington that the Applicant failed to account the delay from September, 2021 up to February, 2022.

Further, Counsel Willington submitted that the point of attending medical treatment before the traditional practitioner is not reflected in the

supporting affidavit. Thus, even if it could be deponed, without proof, the ground of attending clinic before a traditional practitioner cannot stand.

It was the view of Counsel Willington that the Applicant should have attached an affidavit of the traditional practitioner and a proof that such practitioner is registered.

In consideration of the parties' arguments and affidavits, I must point out that labour laws have not left the door open for each and every ground to be considered as sufficient reason for extension of time to take a certain legal delayed action. The overriding consideration is left to the Court to made sure what it considers to be sufficient reason abides with the spirit of promoting economic and social aspects of the individual and of the nation in terms of *Section 3 (a) and (g) of the Employment and Labour Relation Act [Cap 366 Revised Edition 2019]*.

As pointed out by Counsel Willington, extension of time on sickness ground requires scientific proof from a Medical Practitioner. The overall objective is to avoid opening a pandora box for negligence or laziness to substitute seriousness for societies betterment in production and services.

However, it should also be considered with serious note that a portion part of the society attends traditional treatment and there are no medical certificates issued by those registered traditional practitioners. For inclusion

and fairness purposes, I find and hold that attending clinic before a registered traditional practitioner is a good ground of extension of time like attending clinic before an Orthodox or Scientific Medical Practitioner.

Nevertheless, whoever alleges to attend clinic before the traditional practitioner has the onus of proof in four ways: **First**, he/she must depone an affidavit to that effect. **Second**, the application must, apart from his/her supporting affidavit, be attached with the affidavit of the alleged practitioner. **Third**, the affidavit of the alleged practitioners must be supported with a valid Certificate of registration issued in accordance to *Section 18 of the Traditional and Alternative Medicine Act, 2002*. **Four**, the affidavit of the Applicant/claimant and that of the traditional practitioner must disclose that at all the alleged time the Applicant was attending treatment before the traditional practitioner.

The Court cites with approval its position in the case of **Beatus Laurian Ndihayе v. Mariam Kitoelo**, Misc. Civil Application No. 06 of 2021, High Court of Tanzania Mwanza Sub Registry (unreported) p.5 which recognized the ground of attending medical treatment before a registered traditional practitioner, but goes further to lay a supposition that; any fact involving a traditional practitioner must be made by way of affidavit and not a mere letter.

Notwithstanding the afore observation, I have succinctly perused the records, in particular the supporting affidavit and found there is a considerable force of argument by Counsel Willington. The Applicant neither deponed in his affidavit on the facts of attending clinic or treatment before the registered traditional practitioner. It is a mere submission from his Personal Representative.

I further neither found an affidavit from the traditional practitioner nor his/her certificate of incorporation. As such, the Applicant failed to account for each day of delay from 1st September, 2021 when he was terminated up to February, 2022 when he attended clinic before Amana Regional Referral Hospital.

Indeed, the Applicant never accounted the delay for 15 days from 29th December, 2022 when he got the letter from Amana Regional Referral Hospital till 13th January, 2023 when he filed this application.

In the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, Court of Appeal of Tanzania (unreported), the Court emphasized on accounting for each day of delay. It stated:

The delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing period within which certain steps have to be taken.

In the afore circumstances, it seems to me, therefore, that there is nothing the Court can do but dismiss the application for being devoid of merits. It is so ordered.



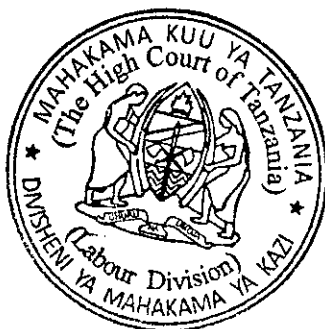
Y.J. MLYAMBINA

JUDGE

20/07/2023

Ruling delivered and dated 20th July, 2023 in the presence of the Applicant in person and learned Counsel Willington Wabinyasi for the Respondent.

Right of Appeal fully explained.



Y.J. MLYAMBINA

JUDGE

20/07/2023