

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

MISCELLANEOUS LABOUR APPLICATION NO. 159 OF 2023

BETWEEN

SYLVESTER SAMSON MBOJE APPLICANT

VERSUS

CRDB BANK PLC RESPONDENT

RULING

Date of last Order: 17/7/2023

Date of Ruling: 21/07/2023

MLYAMBINA, J.

The Applicant through representation of Roman Attorneys is seeking for extension of time within which the Applicant can file Notice of Review against the Ruling of this Court dated 30th March, 2023 between the above mentioned parties in *Execution No. 511 of 2022 delivered by Hon. S.R. Ding'ohi, Deputy Registrar*. The application is by way of chamber summons made under *Rules 24(1), 24(2)(a), (b), (c), (d), (e) and (f), 24(3)(a), (b), (c) and (d), 25(1), Rule 26(1), Rule 55 (1) and (2) and Rule 56(1), (2) and (3) of the Labour Court Rules, G.N. No. 106 of 2007*. The application is supported with the affidavit of Sylvester Samson Mboje, the Applicant.

There is no dispute between the parties that the first *Labour Review No. 6 of 2023* was filed on time but it was struck out on 2nd June, 2023. It is also not disputed that the Applicant was supplied with the copies of the Court decision on 7th June, 2023 and registered the instant application on 12th June, 2023.

Paragraph 15 of the supporting affidavit lays down five points of illegalities necessitating the intended application for review. *One*, the Deputy Registrar wrongly exercised his jurisdiction varying the decision of his predecessor on security/bank guarantee issued on 22nd December 2022. *Two*, the Deputy Registrar wrongly exercised his jurisdiction by claiming that the Applicant/Decree Holder was not entitled to call on the guarantee upon the striking out of *Misc. Application No. 505 of 2022*. *Three*, the Deputy Registrar exercised his jurisdiction illegally by claiming that the execution should proceed as stipulated in the execution form while there is a bank guarantee issued in favour of the Applicant. *Four*, the Deputy Registrar did exercise the jurisdiction not vested in him by varying the terms of the bank guarantee submitted in the Court. *Five*, the Deputy Registrar issued an order dismissing a prayer by the decree holder contrary to the pending application before it.

Based on the above facts, Counsel Roman Masumbuko has called upon this Court to grant this application as the Applicant has accounted for each day of delays of the three days, there is no negligence or laxity and there is no prejudice as the matter concerns execution.

On the other hand, the Respondent opposed this application through the Counter affidavit sworn by Pascal Mihayo, Head of Legal Section of the Respondent.

During hearing, the application was further objected by Counsel Alex Mianga on account that the Applicant failed to account for each days of delay from 2nd June, 2023 to 12th June, 2023 and that there is nowhere in the supporting affidavit backing up the Applicant's contentions.

According to Mr. Mianga, the Applicant failed to pinpoint the errors apparent on the face of the record. It was the view of Counsel Mianga that by allowing this application, it will amount to abuse of Court process and wastage of time.

Having succinctly gone through the supporting affidavit, counter affidavit, submission from parties Counsel and the entire records, I must point that, as a general principle, extension of time is the discretion of the Court which is exercised judiciously and focusing on affording parties to be heard on merits of their grievance. But good cause must be shown. The

supposition is reflected in *inter alia* cases of **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, Court of Appeal of Tanzania at Dar es Salaam (unreported). In that case, the Court held:

What amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account including whether or not the application has been brought promptly. The absence of any explanation for delay and lack of diligence on the part of the Applicant.

In the instant matter, as correctly sworn under paragraph 16 of the supporting affidavit, *Labour Review No. 6 of 2023* was struck out on 2nd June, 2023 after this Court raised *suo motu* a concern that it was not properly filed. Indeed, as sworn under paragraph 18 of the supporting affidavit, the Applicant was supplied with all necessary documents on 7th June, 2023 as it appears on the register of this Court and uploaded the application online on the same date. On 12th June, 2023 the Applicant registered the application. On that note, I find the Applicant was not negligent in pursuing his rights.

I do agree that it is a settled rule that the Applicant has to account each day of delay as it was held in *inter alia* cases of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, Court of Appeal of Tanzania (unreported). However, in the present case, the Applicant has

accounted that after the order was issued on 2nd June, 2023, he could not take any action till he was supplied with the necessary documents on 7th June, 2023. It is on the same date he uploaded and registered it on 12th June, 2023. There was no laxity on his part compelling to deny the right to be heard on the alleged illegalities.

I do agree with Counsel Alex Mianga that the alleged illegalities must be apparent on the face of records. It has also to be sufficient in content. This supposition is reflected in the inter alia case of **Stephen B.K. Muhauka v. The District executive Director Morogoro District Council and 2 others**, Civil Application No. 68 of 2019, Court of Appeal of Tanzania at Dar es Salaam (unreported). In consideration of that principle, I find paragraph 15 of the supporting affidavit raises illegal points to be assessed or analysed by the Court. The issue whether such raised illegalities are valid or not will be subject of the intended review.

In the circumstances of the above, this application stands granted with no order as to costs. The Applicant is given 14 days to lodge the intended application. It is so ordered.

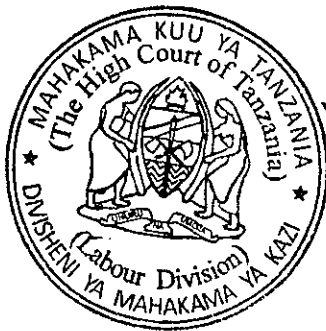


Y.J. MLYAMBINA

JUDGE

21/07/2023

Ruling delivered and dated 21st day of July, 2023 in the presence of Counsel Roman Masumbuko for the Applicant and Alex Mianga for the Respondent.



Y.J. MLYAMBINA

JUDGE

21/07/2023