

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

MISCELLANEOUS APPLICATION NO. 223 OF 2023

*(Arising from an Award issue by Hon. Chuwa, P.M, Arbitrator, in Labour dispute No.
CMA/DSM.TMK/235/2021 at Temeke)*

MOSES GILBERT KITIIME 1ST APPLICANT
KADAWI LUCAS LIMBU 2ND APPLICANT
MUUMIN CHAULEMA 3RD APPLICANT
AZIZI SALUM MWESHA 4TH APPLICANT
FATUMA AKILI MTONGWELE 5TH APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF EAGT RESPONDENT

RULING

*Date of last Order: 28/08/2023
Date of Ruling: 12/09/2023*

B. E. K. Mganga. J.

Applicants have filed this application seeking the court to extend time within which to file an application for revision against an award issued on 22nd November 2022 by Hon. Chuwa, P.M, Arbitrator in Labour dispute No. CMA/DSM/TMK/235/2021 before the Commission for Mediation and Arbitration at Temeke.

In support of the Notice of Application, applicants filed their joint affidavit in which they stated *inter-alia* that, upon being aggrieved with the CMA award, they filed Revision application No. 07 of 2023 within time, but the same was struck out on 17th July 2023 after the court has upheld the preliminary objection by the respondent that the affidavit in support of the application was defective. They stated further that, on 18th July 2023, they applied to be supplied with the copy of the ruling that struck out Revision Application No. 07 of 2023 and that, the same was supplied on 2nd August 2023.

In resisting the application, respondent filed the counter affidavit sworn by Christomoo Isack Ngowi, her secretary. In the counter affidavit, the deponent noted the paragraphs relating to filing of revision application No. 07 of 2023 by the applicants and the results thereof.

When the application was called on for hearing, Mr. Cheba Kameya, Advocate appeared for and argued on behalf of the applicant while Mr. Andrew Miraa, Advocate, appeared and argued for and on behalf of the respondent.

Arguing in support of the application, Mr. Kameya submitted that, applicants were aggrieved with the CMA award that was issued on 22nd November 2022, as a result, on 30th December 2022, while within time,

they filed revision application No. 07 of 2023. He submitted further that, 42 days within which applicants were supposed to file revision expired on 01st January 2023. He went on that, from 01st January 2023 up to 17th July 2023 when revision application No. 07 of 2023 was struck out, applicants were in court prosecuting Revision Application No. 7 of 2023. Counsel for the applicants submitted further that, on 18th July 2023, applicants wrote a letter praying to be supplied with a copy of the Ruling. That, on 02nd August 2023 they were supplied with a copy of the Ruling and filed this application online on the same date. He submitted further that; applicants have accounted for each day of delay. He further cited Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 and submit that, applicants have shown that there was good cause for the delay. He further cited the case of ***Wilbard Mathew Senga (Administrator of the Estate of the Late Mathew Orestes Senga v. Mkwega George Mathew Senga & Another***, Civil Application No. 508/01 of 2020, CAT (unreported) to implore the court to grant the application.

On his part, Mr. Miraa, learned counsel for the respondent, though conceded that applicants filed revision application No. 07 of 2023 within time, he maintained that applicants have no good reason for the delay.

In his submissions, counsel for the respondent conceded that Revision No. 7 of 2023 was struck out on 17th July 2023 because the affidavit was defective and that, the delay is technical and not actual. Counsel for the respondent forcefully submitted that, technical delay is not a ground for extension of time and cited the case of ***Fortunatus Masha v. William Shija*** [1997] TLR 154 to support his submissions.

In further convincing the court not to grant this application, counsel for the respondent submitted that applicants were negligent. When probed by the court as to whether there is even a single paragraph in the counter affidavit showing that applicants were negligent, learned counsel readily conceded that there is none. In his submissions, Mr. Miraa conceded that, applicants filed the above revision application within time and timely filed this application and that, this application is merited, but, he fears his clients, if they became aware that he conceded. With all those submissions, counsel for the respondent prayed that the application be dismissed for want of merit.

In rejoinder, counsel for the applicants reiterated his submissions in chief.

It is clear from submissions of the parties that, applicants filed revision application No. 07 of 2023 within time and that, the same was

struck out on 17th July 2023 because it was supported by a defective affidavit. It is also undisputed by the parties that, the delay is technical and not actual. It is also undisputed by the parties that, applicants timely filed this application after being supplied with the court ruling that dismissed revision application No. 07 of 2023. As correctly submitted by the parties, the delay in this application is technical and not actual. There is a litany of case laws that, technical delay is one of the grounds for the court to extend time. See the case of ***Fortunatus Masha v. William Shija*** [1997] TLR 154 that was cited by counsel for the respondent, the case of ***Mathew T. Kitambala vs Rabson Grayson & The Republic*** (Criminal Appeal 330 of 2018) [2022] TZCA 572, ***Hamisi Mohamed (administrator of The Estates of The Late Risasi Ngawe) vs Mtumwa Moshi (administratrix of The Late Moshi Abdallah)*** (Civil Application 407 of 2019) [2020] TZCA 13 and ***Zuberi Athumani Mbuguni vs National Bank of Commerce Limited*** (Civil Application No.311/12 of 2020) [2023] TZCA 17290 to mention but a few. In ***Kitambala's case*** (supra), the Court of Appeal held *inter-alia* that: -

"We agree with Mr. Msumi that a technical delay is excusable and the Court, in a string of its decisions, has overlooked it and extended time sought by an applicant. We did so in a number of our decisions including

Diamond Motors (supra), cited by the learned counsel for the appellant. Other decision are: Fortunatus Masha v. William Shija [1997] T.L.R. 154 ..."

It is a great misdirection and misconception on part of counsel for the respondent that technical delay is not a ground for extension of time. More so, **Masha's case** (supra) cited by counsel for the respondent, does not support his submissions. It is my view that, in the application at hand, there was technical delay sufficiently to warrant extension of time. More importantly applicants acted diligently in filing this application hence good reason for extension of time.

Before I pen down, I wish to comment albeit briefly that, Mr. Miraa being an officer of the court, did not want to concede to the application fearing it to be known to his clients that he conceded. I advise him to choose one thing; either to be an advocate and appear in court; or comply with what he is told by his clients and stop appearing in court. I am of that view because, an advocate as an officer of the court, has a duty both to the court and his client as it was held in the case of **Mohamed Katindi and Another v. Republic** [1986] T.L.R 134. It seems learned counsel for the respondent believes that he has only a duty to his client and not to the court. In my view, in owing a duty to the court, an advocate, must use his best efforts to restrain and prevent

his client from acting in any illegal, improper manner or using unfair practices in any matter towards the judiciary, opposing counsel or the opposing parties. In other words, an advocate must exercise his own judgment and his professionalism and refuse blindly to follow instructions of his client because he must always remember that his loyalty is to the law. It is indisputable that interpretation of the law is the duty of the court. Therefore, in my view, an advocate may even refuse to represent any client who insists on using unfair or improper means to defeat justice. In emphasizing the duty of an advocate to the court, Hon. Musinga, J, in the case of **Francis Mugo & 22 others v James Bress Muthee & 3 others**, [2005] eKLR, HC (Nakuru) Civ Suit No 122 of 2005 had this to say: -

*"While I agree that the choice of counsels is a prerogative of a party to a suit, it must be borne in mind that in the discharge of his office, an advocate has a duty to his client, a duty to his opponent, a duty to the court, a duty to himself and a duty to the state. **As an officer of the court, he owes allegiance to a cause that is higher than serving the interests of his client and that is to the cause of justice and truth.*** (Emphasis is mine).

In **Attorney General vs Fatuma Amani Karume** (Application No. 29 of 2019) [2020] TZHCLD 1819, Hon. Kilekamajenga, J (chairman of the Advocate Committee) cited several cases on duty of

an advocate including a South African case of ***Kekana v. Society of Advocates of South Africa 1998*** (4) SA 649 (SCA) 551-656

wherein it was held that:-

"...an advocate, whose calling is one which is praiseworthy and necessary to human life, should always cling to the famous principle that the true jurist is an honest man. These qualities of honesty and integrity must continue to be displayed throughout a legal practitioner's career..."

The Advocate Committee quoted further the case of ***J.S. Jadhav v. Mustafa Haji Mohamed Yusuf and another***, AIR 1993 1535, 1993 SCR (2) 1006 wherein it was held inter-alia that: -

"...The central function that the legal profession must perform is nothing than the administration of justice."

Failure of the advocate to be honest to the court simply because he is fearing it to be known to his client, cannot, in my view, be a duty of assisting the court to administer justice, rather, can be an act leading to injustice. More so, that cannot be said to be allegiance to the law or the cause of justice and truth or being honest. I am of the view that, after refreshing his memory and upon being aware of the duties of an advocate both to the court and his client, learned counsel for the respondent may decide whether to continue to practice as an advocate or not.

Since I have held hereinabove that, the delay was technical and that, applicant acted diligently, I hereby allow this application and grant applicant seven (7) days within which to file the intended revision.

Dated at Dar es Salaam on this 12th September 2023.



B. E. K. Mganga
JUDGE

Ruling delivered on 12th September 2023 in chambers in the presence of Mr. Cheba Kameya, Advocate for the Applicants and Andrew Miraa, Advocate for the Respondent.



B. E. K. Mganga
JUDGE