

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

MISCELLANEOUS LABOUR APPLICATION NO. 202 OF 2023

BETWEEN

HOISIA L. MTUI APPLICANT

VERSUS

**THE GENERAL SECRETARY,
PUBLIC SERVICE COMMISSION..... 1ST RESPONDENT
VOCATIONAL EDUCATION AND TRAINING AUTHORITY
(VETA) DAR ES SALAAM AND 2ND RESPONDENT
THE ATTORNEY GENERAL 3RD RESPONDENT**

RULING

Date of last order: 07/09/2023

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MLYAMBINA, J.

The matter before the Court is for extension of time to apply for leave for prerogative orders of Mandamus, Prohibition and Certiorari against the decision of the 1st Respondent for terminating the Applicant from work without sufficient reasons and adhering to legal procedures. The application is supported by the affidavit of Hoisia L. Mtui, the Applicant. It was however, opposed by the Respondents by way of counter affidavit sworn by Mathias Kulwa, Principal Officer of the 2nd Respondent.

At the hearing, the Applicant was represented by Tesiel Augustino Kikoti and the Respondents were represented by learned State Attorney Luciana Kikala.

It was submitted and not disputed by both parties that: *One*, the Applicant was terminated on 13/10/2022. *Two*, according to *Section 17(2) of the Law Reform (Fatal Accident and Misc. Provisions) Act [Cap 310 R.E. 2019]* and *Rule 24(1)(2)(a),(b),(c),(d),(e),(f) of the Labour Court Rules, G.No. 106 of 2007 and Section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2019]*, the Applicant was required to file this application within six months. The time limitation expired on 12/04/2023. *Three*, the application was filed on 19/07/2023. *Four*, the Applicant filed the application before the Commission for Mediation and Arbitration (herein CMA) on 02/2/2023. *Five*, the Applicant was represented by Mr. Kikoti at CMA.

The ground for extension of time, as advanced by Mr. Kikoti was that; the Applicant was not aware that the issue of judicial review cannot be delt by CMA. It was an oversight of the Counsel for the Applicant.

Mr. Kikoti went on to contend that the Applicant was diligent in pursuing her right. She didn't sleep. The matter was struck out before CMA on 22/05/2023. But they were late to get the copy of ruling. To his knowledge, the Applicant got the copy of CMA decision four days before she filed this application.

In response, Ms. Luciana was of humble submission that the Applicant's prayer for extension of time has no merits. It lacks the criteria set for grant of extension of time as stated in the case of **Lyamuya. Construction Co. Ltd. v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 Court of Appeal of Tanzania at Arusha (unreported).

According to Ms. Luciana, the Applicant has failed to account for each day of delay for 55 days and she cannot rely on oversight.

While citing the case of **Jairos Mahali v. Furahini Vahaye and Another**, Misc. Land Application No. 80/2020 (unreported), it was Ms. Luciana humble prayer that the application be dismissed for lack of merits.

Having judiciously gone through the supporting affidavit and the submission of Counsel Kikoti, the Court is inclined to observe that the Applicant has failed to advance not only sufficient cause for the delay of nine months but also failed to account for each day of delay.

Under paragraph 3.7 of the supporting affidavit, the Applicant contended that she was lying on bed sick on 16/11/2022 upon receiving the letter of termination of employment. However, there is no any documentation from a medical practitioner to support such averment.

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Under paragraph 3.7 of the supporting affidavit, the Applicant contended that she was lying on bed sick on 16/11/2022 upon receiving the letter of termination of employment. However, there is no any documentation from a medical practitioner to support such averment.

As admitted by the Applicant's Counsel, this kind of application, as per the law, is supposed to be filed within six months. The Applicant was terminated from employment on 13/10/2022. There is no genuine reason advanced by the Applicant as to why she preferred a matter before CMA despite the fact that throughout the time, the Applicant was represented by an experienced Advocate Mr. Kikoti.

An oversight ground brought forward by Mr. Kikoti cannot be a good ground for extension of time in law. The moment the Court allows such ground, litigations will never come to an end. There are plethora of authorities requiring advancing sufficient cause for the Court to grant an extension. One of such cases is that of **Lyamuya Construction Co. Ltd** (supra) and the case of **CRDB Bank Ltd v. George Kilindu and Another**, Civil Application No. 87 of 2009 Court of Appeal of Tanzania at Dar es Salaam (unreported).

Though there is no dispute that the matter was struck out before CMA on 22/05/2023, and that that the Applicant late to get the copy of ruling, I find such argument is devoid of merits. The reason is that this Court has in a number of times, laid a position that the decision of the President in labour matters can only be challenged by way of judicial review before the High Court. It sounds unrealistic and illegal to challenge the decision of the

President before CMA. One of the decisions reflecting such position is the case of **Mlenga Kalunde Mirobo v. The Trustees of the Tanzania National Parks and Another**, Labour Revision Application No. 6 of 2021, High Court of Tanzania Iringa Sub Registry (unreported).



Y.J. MLYAMBINA

JUDGE

07/09/2023

COURT:

Ruling delivered and dated 7th September, 2023 in the presence of learned Counsel Tesiel Kikoti for the Applicant and learned State Attorney Luciana Kikala for the Respondents.



Y.J. MLYAMBINA

JUDGE

07/09/2023