

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LABOUR DIVISION)**

**AT DAR ES SALAAM**

**MISC. APPLICATION NO. 210 OF 2023**

**BETWEEN**

**NATIONAL OIL TANZANIA LTD.....APPLICANT**

**AND**

**ALOYCE RAMADHANI AND ANOTHER ..... RESPONDENT**

**RULING**

**Date of last Order:** 31/08/2023

**Date of Ruling:** 19/09/2023

**MLYAMBINA, J.**

In the instant matter, the Court is called upon to determine only one ground; *whether it is proper and justifiable for the Applicant to be granted extension of time to file Notice of Appeal out of time.* To understand the nature of this dispute, brief facts of the case are necessary. The Respondents were employees of the Applicant since 2007 up to 04/05/2015 when they were terminated from employment on the reason that they failed to observe EWURA directives relating to fuel price. Aggrieved by the termination, the Respondents referred the matter to the Commission for Mediation and Arbitration (herein CMA) where the dispute was decided in their favour.

Being dissatisfied by the CMA's decision, the Applicant unsuccessfully filed revision application before this Court. Again, being dissatisfied by this Court's decision, the Applicant lodged the notice of appeal and proceeded to file the memorandum of appeal at the Court of appeal whereby the matter was registered as *Civil Appeal No. 367 of 2020*. However, the appeal at the Court of Appeal was withdrawn for the reasons which will be apparent in the due course of this ruling.

The application proceeded by way of written submissions. Before the Court, the Applicant was represented by Mr. Gilbert Mushi and Mr. Praygod Uiso, Learned Counsel. On the other hand, Mr. Prosper Mrema, Learned Counsel appeared for the Respondents.

Arguing in support of the application, Mr. Mushi and Mr. Uiso submitted that; on 3<sup>rd</sup> July 2023 the *Civil Appeal No. 367 of 2020* was called on for hearing at the Court of Appeal at Dar es Salaam. They stated that the Justice's of Appeal raised the issue on point of law that the Certificate of Delay issued by the Deputy Registrar was defective and it rendered the Appeal defective. Looking on the records, it shows that the Certificate of Delay was issued on 14<sup>th</sup> July 2020 and the contents within which shows that it excludes time from 6<sup>th</sup> April 2020 up

to 14<sup>th</sup> August 2020 which is even far beyond the Certificate of Delay itself.

Counsel Praygod went on to submit that; after discovering that the Certificate of Delay is defective, the only remedy to the Applicant was to withdraw the appeal so that they could start the appeal process afresh. Therefore, the appeal was withdrawn. They then restarted the appeal process afresh. It was further submitted that the Applicant delayed for a total of 11183 days. Thus, the 1,173 days are technical delay and 18 days' actual delay. The days for technical delay were accounted as follows; on 13<sup>th</sup> March 2020 the Judgment was pronounced by this Court. On 8<sup>th</sup> April 2023, the Applicant filed the Notice of Appeal and the letter requested for copies of Judgement, decree, proceedings, and Certificate of Delay. Whereas, from 14<sup>th</sup> August 2020 the Applicant received the Certificate of Delay and filed the Memorandum and record of appeal on 12<sup>th</sup> October 2020. The Applicant's Counsel was of the view that since 14<sup>th</sup> August 2020 up to 3<sup>rd</sup> July 2023 when the appeal was withdrawn from the Court of Appeal, the Applicant was before The Court of Appeal prosecuting the said Application.

As regards to the the 18 days' actual delay, the Applicant's Counsel stated that 2 days (3<sup>th</sup> July 2023) the day when Civil application

367/2020 was withdrawn, and on 4<sup>th</sup> July 2023 they had a meeting with the Applicant's Management discussing the way forward. 4 days (that is from 5<sup>th</sup> July 2023 up to 8<sup>th</sup> July 2023), they had various meetings with their client to discuss the case where they finally came with the decision of restarting the appeal process afresh. They therefore filed extension of time to file Notice of appeal out of time. They went on to elaborate that, 1 day (7<sup>th</sup> July 2023) was a public holiday and 2 days (9<sup>th</sup> July 2023 and 10<sup>th</sup> July 2023) were weekends. On 17<sup>th</sup> July 2023 their client instructed them to prepare and file the present Application while the 3 days were used to prepare and file this application.

To pursue this Court to grant the extension of time sought, the Counsel backed up their submissions with the case of **CHAMA CHA KUTETEA HAKI NA MASLAHI YA WALIMU TANZANIA (CHAKAMWATA) v. THE REGISTRAR OF ORGANIZATIONS** (Misc. Labour Application No. 3 of 2020), High Court of Tanzania at Mbeya (unreported), whereas it was held that:

All the conditions for applying the doctrine of technical delay set in the Precedents cited previously were thus, met in the matter at hand. I thus find that, the doctrine of technical delay applies to the matter at hand, and it does so in favor of the Applicant.

Further, the Applicant's Counsel cited the case of **Golden Sand's Service Apartment's Ltd v. Samm Abdallah Obathany**, Misc. Application No. 394 of 2022, High Court of Tanzania, Labour Division at Dar es Salaam (unreported) where it was held that:

In my view, accepting allowance of 10 days for preparation of pleadings is reasonable and not arbitrary. Therefore, such submission by the Appellant Constitutes good cause in the circumstances of this case.

In the upshot, the Applicant's Counsel urged the Court to grant the extension of time sought.

In response, the Respondents vehemently challenged the application. Mr. Mrema submitted that; the issue raised by the Justices of Appeal was that the appeal is time barred. The Applicant conceded to such fact. Even before this Court, the Applicant still admits that the application was time barred as deponed at paragraph 3.11 of the Applicant's affidavit in support of the application. He insisted that the issue raised before the Court of Appeal is that the appeal was time barred because the Certificate of Delay was issued on 14<sup>th</sup> July, 2020 while the memorandum of appeal and records of appeal were filed on 12<sup>th</sup> October, 2020 contrary to *Rule 90(1) of the Court of Appeal Rules*.

Mr. Mrema argued that allowing the present application is to welcome an attempt to resurrect the matter which have been conceded by the parties that it is time barred. To booster his submission, Counsel Mrema referred the Court to the case of **Tanzania Breweries Limited v. Edson Muganyizi Barongo and 7 others**, Misc. Labour Application No. 79 of 2014, Dar es Salaam (unreported). He also referred the Court to the case of **J. W. Lwada (1977) Ltd v. Peter Komote**, Revision No. 52 of 2008, High Court at Dar es Salaam (unreported).

Mr. Mrema went on to submit that the reason advanced by the Applicant for the delay does not hold water, considering the degree of lateness. He said the case is in Court corridors since 2017. Thus, the Respondents are supposed to reap the fruit of the Award. As to the issue of illegality deponed at paragraph 5(v) of the Applicant's affidavit, it was submitted that the Applicant failed to identify the alleged illegality. To support his submission, he cited the case of **Filson Mushi v. Jitegemee Saccos Ltd**, Civil Application No. 313/05 of 2021, Court of Appeal at Moshi (unreported). In conclusion, Counsel Mrema urged the Court to dismiss the application for lack of merit.

I have dully considered the submission of both parties. The records of this case are clear that the Applicant is urging this Court to extend

time within which to lodge the notice of appeal for the purpose of filing an appeal to Court of Appeal to challenge the decision of this Court delivered on 13/03/2020. The requirement of filing notice of appeal is governed by *Rule 83 of the Tanzania Court of Appeal Rules, 2009* (herein CAR). *Rule 83 (supra)* provides as follows:

(1) Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.

(2) Every notice shall, subject to the provisions of rules 91 and 93, be so lodged within thirty days of the date of the decision against which it is desired to appeal.

In the matter at hand, after the impugned decision was delivered on 13/03/2020, the Applicant on 08/04/2020 lodged the notice of appeal. He also filed the letter requesting for copies of judgement, decree, proceedings and a Certificate of Delay. On 14<sup>th</sup> August, 2020 the Registrar informed the Applicant that the requested copies were ready for collection. The Applicant collected the same and proceeded to file the *Memorandum and Records of Appeal No. 367 of 2020* to the Court of Appeal on 12<sup>th</sup> October, 2020. The Applicant filed the appeal pursuant to the provision of *Rule 90 of Court of Appeal Rules* which is to the following effect:



(1) Subject to the provisions of rule 128, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged with -

- (a) a memorandum of appeal in quintuplicate;
- (b) the record of appeal in quintuplicate;
- (c) security for the costs of the appeal, save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant

On the basis of the above analysis, it is clear that the first notice of appeal was lodged on time. However, the appeal was withdrawn because the same was found to have been lodged out of time. After examining the records, I have noted that on 14<sup>th</sup> August, 2020 the Applicant was notified to collect the certificate of delay and other copies for necessary action. To the contrary, the Certificate of Delay indicates that the same was issued on 14<sup>th</sup> July, 2020. Under such circumstances, it is my observation that the Deputy Registrar made clerical mistake in



writing the date when the Certificate of Delay was issued thus, contradicting the appeal to be found as it was filed out of time. Since the Certificate of Delay was issued on 14<sup>th</sup> August, 2020 it is obvious up to such date the days of the delay ought to have been excluded pursuant to the provision of *Rule 45A (2) of the Court of Appeal Rules* which provides:

In computing the time within which to lodge an application under this rule, there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision and the order

As revealed from the records, the first notice of appeal to Court of Appeal was filed timely, I therefore find the delay in this application to be technical which is a good ground for the grant of extension of time as rightly argued by the Applicants' Counsel. In the case of **Fortunatus Masha v. William Shija** (1997) TLR 154, the claim of technical delay was addressed whereby the Court stated the following:

With regard to the second point, I am satisfied that a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense

that the original appeal was lodged in time but the present situation cross only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted"... for these reasons I allow this application and extend the time for filing or instituting a fresh appeal".

The circumstances in the present application are quite similar with the above cited case. In the event, I find the delay in this application to be technical since the first appeal was instituted on time but the same was found to be incompetent due to clerical mistake found in the Certificate of Delay. As such the Applicant cannot be deprived of the right to restart afresh the appeal process. As to the delay of the remaining days which are not technical, it is my view that the Applicant has accounted for the same.

I have noted the Respondent's submission that the matter was being time barred, hence the Applicant cannot be allowed to file the present application. As explained above, the record mistakenly indicated that the matter was time barred due to the errors contained in the Certificate of Delay. In my view, justice will not be served if the Applicant will be punished for the clerical mistake done by the Court.

The mistake has to be rectified so as to avail the Applicant a chance to start the appeal process afresh.

In the result, I find the Applicant has accounted for the delay in the present application. In the premises, the application is hereby granted. The Applicant is granted fourteen (14) days leave from the date of the order to file the intended notice of appeal.

It is so ordered.



**Y. J. MLYAMBINA**

**JUDGE**

**19/09/2023**

Ruling delivered and dated 19<sup>th</sup> September, 2023 in the presence of Counsel Praygod Uiso for the Applicant and Prosper Mrema for the Respondent. Right of Appeal fully explained.



**Y. J. MLYAMBINA**

**JUDGE**

**19/09/2023**