

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

MISCELLANEOUS LABOUR APPLICATION NO. 254 OF 2023

*(Arising from the Judgement and Decree of the High Court of Tanzania Labour Division
at Dar es salaam in Revision No. 378 of 2019 Dated 8th May 2020)*

STANDARD CHARTERED BANK (T) LIMITED.....APPLICANT

VERSUS

LINAS SIMON.....RESPONDENT

RULING

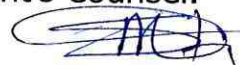
Date of last order; 07th Nov. 2023

Date of Judgement 24th NOV. 2023


OPIYO,

The Applicant herein, has moved this court under Rules 24(1) (2)(a)(b)(c)(d)(e), Rule 56(1) of the Labour Court Rules G.N.No.106 of 2007, and Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 seeking for enlargement of time within which to file Notice of Appeal against the Judgement of this Court out of time.

The application is supported by an affidavit deponed by Mr. Cornelius Kariwa, applicant's advocate and is opposed by the counter affidavit sworn by Mr. Charles Mathias, respondent's Counsel.



The brief background of the dispute is that, the applicant was employed by the respondent on 4th May 2011 as a Bank Teller. On 13th April 2016 he was terminated for misconduct for the alleged loss of TZS 27 million, aggrieved with the termination the applicant referred the matter to the Commission. At referral stage the Commission determined the dispute in respondent's favour. Being dissatisfied with the award, the applicant filed Revision Application No. 378 of 2019 in which the CMA award was upheld. Following that, Civil Appeal No. 362 of 2020 was filed which was later withdrawn. This made the applicant become out of time to pursue the appeal, she made application for extension of time to file which was also struck out with leave to re-file, leading to the current application that was refilled for the same prayer for extension of time.

At the hearing of the application, both parties managed to adhere to the Court schedule for filing the submissions as per the orders. The applicant is represented by Glory Venance, while the respondent is represented by Mr. Charles Kisoka, Advocates. Supporting the application for extension of the applicant advanced two grounds, technical delay and illegality. 

Starting with technical delay Ms. Glory submitted the main reason as to why the applicant is seeking for extension of time to file Notice of Appeal is that the applicant has been diligently and in good faith prosecuting Civil Appeal No 362 of 2020 that commenced on 15th May 2020 when she lodged the letter requesting to be supplied with certified copies of judgment, decree and proceedings for appeal purposes and a Notice of appeal filed on 5th June 2020. He stated that when the said appeal was called for hearing it was noted that the appeal was incompetent due to lateness in serving application letter to the respondent herein hence making a Registrar's Certificate of Delay incompetent to sustain the appeal. On that incompetence the matter was marked withdrawn.

It was submitted by Ms. Glory that, soon after withdrawal of the appeal the applicant on 19th July 2023 filed Misc. Application No. 204 of 2023 for extension of time to file a notice of appeal to the Court of Appeal, but on technical reason it was struck out on 24th August 2023 as per (annexure ST-6 attached in applicant affidavit), hence, this application was filed on 6th September 2023. On such narrated facts of being in Court corridor, she is of the view that the applicant acted diligently in pursuing her rights and the delay was technical and not actual.



Supporting her stand, she referred to Section 21 (1) (2) of Law of Limitation Act, [CAP 89. R.E 2019] which exclude time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, in good faith. She further insisted that, a distinction should be made between cases involving real or actual delays and mere technical delay as was stated in the case of **Fortunatus Masha v. William Shija and Another**, [1997] TLR 154.

From the above case she maintained that, it is evident that in the instant matter the delay in lodging the a notice of appeal is a mere technical delay and not an actual delay since the first notice of appeal was lodged on time, together with applications that were necessary for initiating the appeal.

Regarding illegalities Ms. Glory submitted that, there are several irregularities from the judgment of the High Court that sought to be challenged to the Court of Appeal which include a contentious issue that the High Court Judge erred in law and in fact by holding that the respondent should be reinstated without due regard to the circumstances of the case. In justifying her stand that once there is allegation of illegality in the impugned decision, then the same could

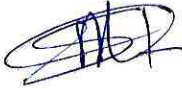
stand as a good ground of extension of time he made reference to the case of **Kalunga and Company Advocate vs. National Bank of Commerce Ltd**, [2006] TLR page. 235, CAT.

It was further submitted that, it is an established principle of law that the essence for time limitation is not to defeat the ends of justice, as was held in the case of **Castellow versus Somerset Country Council (1993) All E.R. 952**. She thus prayed for the application to be granted.

Disputing the application on technical delay, Mr. Kisoka submitted that Section 21 (2) of the Law of Limitation Act, [Cap 89, R.E 2019], which the Applicant have referenced, indeed provides a provision for excluding the time during which a plaintiff or applicant has been diligently prosecuting another civil proceeding against the same party for the same relief or based on the same cause of action. He averred that this exclusion is valid under the condition that the proceeding is pursued in good faith in a court that, due to a lack of jurisdiction or a similar defect, is considered incompetent. In the context of the applicant's case, Mr. Kisoka submitted that, this provision is irrelevant on the reason that in Civil Appeal No. 362 of 2020, the withdrawal was necessitated by failure to comply with mandatory Rules which could

have been avoided with due diligence and compliance with mandatory rules and procedures. Similarly, Miscellaneous Application No. 204 of 2023 was struck out without leave to refile for the same reasons. On that scenario, he believes that these deficiencies were not related to the jurisdiction of the court but rather stemmed from the applicant's own negligent actions or inactions.

Insisting on how time may be excluded, Mr. Kisoka argued that, Section 21 (2) offers an avenue of excluding time in cases where another proceeding is diligently pursued in good faith. He added that, the fact that each proceeding was brought to its finality before initiating a new one indeed suggests that Section 21 (2) of the Law of Limitation Act, [Cap 89, RE 2019], may not be applicable in this context. This section specifically deals with situations where multiple proceedings are concurrently prosecuted in a good faith manner. On that stand he is of the view that the relevance of the provision contested by the applicant may not be well-founded in the present circumstances. He added that, it is crucial to evaluate the specific provisions and their applicability to the facts at hand.



Mr. Kisoka went on by challenging the Fortunatus Masha's case (Supra) as referred by the applicant. He asserted that, it is distinguishable on the reason that in the present case, the delay is rooted in a failure to serve the respondent with an application for a copy of the proceedings within the prescribed time limit which is mandatory, while in the cited case the delay was technical one because the original appeal had been lodged in time, but the subsequent situation arose due to the appeal's incompetence. According to him, in the present case, the delay is not solely technical, it involves the applicant's non-compliance with a mandatory rule regarding service.

On alleged illegality, Mr. Kisoka submitted that it is essential to be noted that errors in law and fact, while significant in the context of legal proceedings, do not necessarily amount to the illegality of a judgment. He said that, an illegal decision typically refers to a judgment that is fundamentally flawed, tainted by corruption, bias, or other grave irregularities, or rendered in a manner that contravenes established legal principles and procedures. He is of the view that, errors, whether in law or fact, are part of the normal judicial process, and they are subject to review and correction through the appropriate legal channels, such as the appeal process. Therefore, the mere presence of



errors, even if they are substantial, does not automatically render a decision illegal. As was addressed by the Court of Appeal in the case of **Mtengeti Mohamed v Blandina Macha**, (Civil Application No. 344/17 Of 2022) **citing the case of William Kasian Nchimbi and three others v. Abas Mfaume Sekapala and Two Others, Civil Reference No. 2 of 2015**. The Court ruling emphasized that illegality cannot serve as a shield against the applicant's inaction.

On time limitations, emphasizing that such limitations are not intended to defeat the ends of justice. As they have referenced the case of **Castellow v. Somerset County Council** (1993) All E.R. 952. Mr. Kisoka acknowledged that the cited legal principles, but emphasize the importance of granting an extension of time when doing so does not result in procedural abuse, contemptuous default, or prejudice to the opposing party. He added that these principles are vital in ensuring that justice is not unduly hindered by rigid time limitations, and they reflect a commitment to a fair and equitable legal process.

After consideration of both parties' submission, I find that, the only issue to be determined is whether the Applicant has adduced sufficient cause for the delay for this Court to exercise its discretion of granting extension of time. In addressing this issue, this Court find it worth to



consider three reasons advanced by the applicant in his application regarding extension of time. First; the delay was not actual, but it was technical delay, second; the award is tainted with illegalities and third, whether justice may be defeated by time limit.

Starting with the technical delay the deponent in his affidavit at paragraph 3(i) deponed that, the delay was technical as the first application was filed within time and applicant acted promptly in filing application for enlarging time. On the other hand, the respondent maintained that the applicant failed to meet standards established by law for the extension of time to be granted.

In answering the disputed questions, the applicable provision is rule 68 (1) of the Tanzania Court of Appeal Rules, 2009 which directs the one who intend to appeal to issue the Notice of Appeal within 30 days. That means, the respondent was also, supposed to be served with all documents within 30 days from the date of decision. Since it is undisputed that Civil Appeal No. 362 of 2020 was filed within a specified time and the applicant was already penalized for having her application marked withdrawn, prompting the current application, the delay is technical. The record also reveals that, the applicant acted promptly by filing application for enlargement of time, Misc. Application



No. 204 of 2023 within four days, after Civil Appeal No. 362 of 2020 being marked withdrawn. It is a well-established principle that for a technical delay to stand, the applicant should file the first application in time, as was discussed in the case of **Fortunatus Masha v William Shija & Another** [1997] TLR 154 which held that; -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances, an extension of time ought to be granted."

The above cited authority gives a basis under which circumstances technical delay may be applied. In this matter, the record and parties submissions reveal that, after the judgement was issued in Revision No. 378 of 2019, the applicant acted promptly by filing Civil Appeal No. 362 of 2020 within a time before the subsequent technicalities hindering their progress ensued. It is therefore my view that technical delay stands in such circumstances. Thus, the first ground advanced



by the applicant warrants grants of extension of time. I find no reason to proceed with the remaining grounds.

In premises, unhesitatingly conclude that, the applicant managed to adduce sufficient ground delay. Therefore, I hereby grant the application for extension of time for the applicant to file notice of appeal out of time. The same shall be filed within fourteen days from the date of this order. No orders as to costs.

It is so ordered.



M. P. OPIYO,

JUDGE

24/11/2023