

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 26433 OF 2024

BETWEEN

SAUDA KIWANDA APPLICANT

VERSUS

DAWASA (MAMLAKA YA MAJI SAFI NA

USAFI WA MAZINGIRA DAR ES SALAAM RESPONDENT

RULING

Date of last Order: 20/02/2024

Date of Ruling: 07/03/2024

MLYAMBINA, J.

The Applicant was employed by the Respondent in the position of Secretary since 1984. She was promoted to various positions, the fact which is not relevant at this juncture. She was terminated from employment on 2008 on the ground of misconduct namely; embezzlement of Respondent's money to the tune of One Million Four Hundred Thousand only (TZS 1,400,000/=). Aggrieved by the termination, she referred the matter to the Commission for Mediation and Arbitration (herein CMA) claiming for unfair termination both substantively and procedurally. After considering the evidence of the parties, on 24/08/2023 the CMA delivered an award which found the

Applicant's termination was fair. Thus, the Applicant's claim was dismissed at the CMA.

Again, being unhappy with the CMA's decision, the Applicant filed revision application before this Court. The said revision was struck out from the Court's registry due to technicalities on 15/11/2023. After striking out, the Applicant filed the present application to pursue the Court to grant extension of time to refile revision application. The grounds upon which the application is based are as follows:

- i. That, the delay is technical one.
- ii. That, the delay is not excessive, from the day the application was struck out to the date of filing this application is only ten days used to obtain the Court order, drafting and filing this application.
- iii. That, the decision of the CMA condoned the illegality committed by the Respondent during disciplinary hearing processes and failed to evaluate the evidence and testimonies thus, arriving at a wrong conclusion as regard to procedural irregularities.

The application proceeded by way of written submissions. Before the Court, the Applicant was represented by Mr. Raymond Wawa,

learned Counsel. Mr. Amos E. Masala, Principal Officer of the Respondent appeared for Respondent.

Arguing in support of the application Mr. Wawa submitted generally on the above grounds. He maintained that the delay to file the intended application is technical one because the initial revision application was filed within time. He argued that the application for enlargement of time is entirely based on the discretion of the Court upon good cause shown. He stated that number of cases defines what amounts to good cause. Mr. Wawa referred to the case of **Bertha v. Alex Maganga**, Civil Reference No. 7 of 2016 where the Court of Appeal stated as follows:

Whilst it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court discretion, the Court is enjoined to consider, inter alia reasons for the delay, length of the delay, whether the Applicant was diligent and degree of prejudice to the Respondent if time is extended.

In line with the above decision, Mr. Wawa argued that; in the present case, the Applicant was diligent and pursued his case within time both before the CMA and the Court. He went on to submit that the Respondent has not disclosed anywhere the irreparable damage likely to

be suffered if the present application is granted. He further maintained that the delay in this application is technical one which should be distinguished from actual delay. To strengthen his submission, he relied to the case of **Fortunatus Masha v. William Shija and Another**, Civil Application No. 06 of 1997 TLR (1997) 154.

Mr. Wawa further identified the substantive and procedural irregularities done by the Respondent while terminating the Applicant. That the Applicant was not availed with necessary documents before disciplinary hearing. That the Respondent used the report from the internal audit with ineligible staff members who were never summoned before the disciplinary hearing and that the disciplinary hearing report was neither prepared nor signed by the presiding Chairman. He argued that the CMA condoned the pointed illegality committed by the Respondent during disciplinary hearing process. For the interest of justice, Mr. wawa urged the Court to grant this application.

In response to the first ground, Mr. Masala submitted that the Applicant was negligent by filing incompetent application before the Court. That, *Revision No. 240 of 2023* was struck out for being incompetent. Mr. Masala argued that the mistake made by a party's Advocate through negligence or lack of diligence cannot constitute a

good ground for extension of time. Mr. Masala put reliance of his submission to the case of **Hashimu Madongo & 2 Others v. Registrar for Trades and Industries and Another**, Civil Application No. 13 of 1999, High Court of Tanzania (unreported) cited in the case of **Atuwenekye Mwenda v. Hezron Mangula**, Misc. Land Application No. 5 of 2020, High Court of Tanzania Iringa Sub Registry. The same position is in the case of **Kambona Charles Pangani v. Elizabeth Charles**, Civil Application No. 529 of 2019 (unreported).

Mr. Masala went on to submit that the Applicant's counsel being an Advocate, ought to know the correct document properly drafted for filing before the Court instead of filing an incompetent application which was struck out for being incurably defective.

As regards to the second ground, Mr. Masala strongly disputed the allegation that the Applicant delayed for ten days. He submitted that, there is nowhere the Applicant stated as to when he wrote a letter requesting for certified copies of ruling and, when the said copies were ready for collection so as to ascertain if the delay on each day was accounted. He added that the Applicant did not account for 13 days from when the application was struck out to the date when the Applicant filed this application. the counsel argued that delay even on a single day

must be accounted for. To booster his position, Mr. Masala referred the Court to the case of **Muse Zongori Kisere v. Richard Kisaka Mugendi and 2 Others**, Civil Application No. 244 of 2019, Court of Appeal of Tanzania, Dar es Salaam (unreported).

Turning to the last ground, Mr. Masala argued that for illegality to form the basis of an extension of time it must be clearly visible upon the face of the record. He stated that the allegation of illegality was not reflected in the CMA award dated 24/08/2024. He added that the Arbitrator analysed and evaluated the evidence and arrived at the justice decision. In the upshot, he urged the Court to dismiss the application for lack of merit.

Rejoining the application, Mr. Wawa reiterated his submission in chief. He added that the cases cited by the Respondent's Counsel are distinguishable to the circumstance at hand. He further maintained that the delay in this application is technical one.

I have dully considered the rival submissions of the parties. The crucial issue for determination before the Court is; *whether the Applicant has advanced sufficient reasons for the grant of extension of time sought.*

In the case of **Yusufu Same and Hawa Dada v. Hadija Yusufu**, Civil Appeal No. 1 of 2002, Dar es Salaam, cited by the Respondent's Counsel, the Court had this to say on granting extension of time:

It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. 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 or valid explanation for the delay; lack of diligence on the Applicant.

Guided by the above decision, in the application at hand the Court will examine if the mentioned factors have been complied with, as well as the principles stated in other decisions including the case of **Bertha v. Alex Maganga** (*supra*). In the present application, the Applicant strongly submitted that the delay in this application is technical one. That the first revision application was filed timely but the same was struck out for technical reason. I find such argument to have merit because it is evidenced by the records available in Court. It is revealed that the impugned decision was delivered by the CMA on 24/08/2023.

Whereas the Applicant filed revision application which was registered as *Revision No. 240 of 2023* on 04/10/2023. The said revision was struck out on 15/11/2023 for being accompanied by defective affidavit. Since no leave to refile was granted, the Applicant filed the present application on 28/11/2023.

It was Mr. Wawa's submission that the 13 days from the date of striking out to the date of filing this application were used for obtaining copies of the relevant order and drafting documents used for filing this application. It is my view that such justification is valid. The 13 days used were reasonable because the Applicant acted promptly. The Applicant has been acting diligently from when the CMA delivered its decision. The delay of 41 days is purely technical delay and the same was accounted by the Applicant. This is also the Court's position in the case of **Fortunatus Masha v. William Shija and Another** (supra) where it was 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.

I don't disregard the principle of accounting for each day of delay as emphasized in numerous Court decisions including the case of **Muse Zongori** (*supra*) but in this case the delay of 13 days have been accounted for. It is not inordinate delay and it is justifiable for the Applicant to use those days to obtain the order and prepare documents for filing this application. Moreover, I have noted the Respondent's counsel submission that the revision application was struck out due to negligence of his Counsel. It is my view that the alleged negligence has been penalised by striking out the revision application. Hence, the Applicant cannot be punished twice. Nonetheless, the ground of negligence would have stand if numerous applications were struck out due to Advocates' negligence. To the contrary, only one application was struck out. Hence the point of negligence is of no weight in this case.

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 refile the intended revision application.

It is so ordered.



Y.J. MLYAMBINA

JUDGE

07/03/2024

Ruling delivered and dated 7th March, 2024 in the presence of Counsel Raymond Wawa for the Applicant and Amos Enock Masala for the Respondent.



Y.J. MLYAMBINA

JUDGE

07/03/2024