

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

MISCELLANEOUS APPLICATION NO. 278 OF 2023

SHAZAF SECURITY LIMITED APPLICANT

VERSUS

SOPHIA ELIAS KAAYA RESPONDENT

RULING

Date of last Order: 05/02/2024
Date of Ruling: 16/02/2024

B. E. K. Mganga, J.

Shazaf Security Limited, the herein applicant had employment contract with Sophia Elias Kaaya, the herein respondent. It happened that applicant terminated employment of the respondent as a result, the later filed Labour Dispute No. CMA/DSM/TMK/85/2022/50/2022 before the Commission for Mediation and Arbitration (CMA) on ground that she was unfairly terminated. On 2nd May 2023, Hon. Mikidadi, A, Arbitrator, issued an award in favour of the respondent. Aggrieved with the award, but being out of time, applicant has filed this application seeking

extension of time within which to file (i) an application for revision and (ii) a notice of intention to seek revision (CMA F10).

In support of the Notice of Application, applicant filed the affidavit sworn by Mkumbo William Makala, her principal officer. In the said affidavit, the deponent stated *inter-alia* that, applicant was served with the award on 16th June 2023 and that, on 19th July 2023, while within time, filed Revision No. 162 of 2023. He stated further that, on 12th September 2023, when the said revision application was called on for hearing, Mr. Christopher Sayi Mbuya, Advocate for the respondent, successfully raised a preliminary objection that the applicant is incompetent for want of the Notice to seek Revision (CMA F10). That, due to the said preliminary objection, Revision No. 162 of 2023 was struck out. Mkumbo William Makala deponed further that, applicant became out of time after Revision No. 162 of 2023 was struck out. He also deponed that, 22 days from 12th September 2023 to 3rd October 2023 were spent by the applicant in preparation of filing this application.

On the other hand, Sophia Elias Kaaya, the respondent, filed her counter affidavit opposing this application. In her counter affidavit, respondent noted that Revision No. 162 of 2023 was struck out by this court and attached the order that struck out the said revision

application. Respondent deponed further that, the said revision No. 162 of 2023 was struck out due to negligence of the applicant.

When this application was called on for hearing, Mr. Joseph Basheka, personal representative of the applicant, appeared and argued for and on behalf of the applicant while Mr. Christopher Mbuya, Advocate, appeared and argued for and on behalf of the respondent.

Arguing in support of the application, Mr. Basheka submitted that, initially applicant filed Revision No. 162 of 2023 within time but the said application was struck out on 12th September 2023 after the court has upheld the preliminary objection raised by the respondent that applicant did not file the notice to seek revision (CMA F10). He also submitted that applicant filed this application on 3rd October 2023. He added that, from 12th September 2023 to 03rd October 2023 it is 22 days. He argued that, the said period of 22 days was spent by the applicant in preparation of this application and that the said time is reasonable. To support his submissions, Mr. Basheka referred the Court to the case of ***Hamisi Bushiri Pazi & 4 Others V. Saul Henry Amon & 4 Others***, Misc. Land Case Appl. No. 795 of 2016 HC (unreported) and ***Grumet Reserve Co. Ltd V. Morice Akiri***, Misc. Labour Appl. No. 29 of 2021 HC (unreported). He further submitted that the delay is technical and not actual one.

Mr. Basheka submitted further that, since the notice to seek revision is supposed to be filed at CMA, he prayed leave of the Court to extend time to file the said notice. He concluded that, it is in the interest of justice that, this application be granted and that, in granting it, the respondent will not be prejudiced.

On the other hand, Mr. Mbuya, advocate for the respondent, adopted the counter affidavit of the respondent opposing this application. He submitted that applicant was supposed to account for each day of the delay. To support his submissions, learned counsel cited the case of ***Jackson Mwendi V. Tusiime Holdings (T) Ltd***, Misc. Labour Appl. No. 195 of 2020 HC (unreported). He submitted further that, applicant has failed to account for each day of delay.

Learned counsel for the respondent also submitted that applicant has not adduced sufficient reason for the delay. In his submissions, learned counsel conceded that, initially, applicant filed the revision within time, but the same was struck out for failure to file the notice to seek revision. Counsel was quick to submit that, applicant was negligent for not filing the notice to seek revision. Learned counsel further submitted that, extension of time is not the applicant's right but discretion of the Court.

Mr. Mbuya submitted that, applicant has not filed CMA F10. He argued that, applicant was supposed to file the said CMA F10 at CMA and that since she was out of time, she was supposed to file an application for extension of time at CMA to file CMA 10. Learned counsel argued that, applicant was supposed to do so under Rule 34(1) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. 42 of 2007. Learned counsel concluded his submission praying this application be dismissed for want of merit.

In rejoinder, Mr. Basheka, the personal representative of the applicant submitted that, the notice to seek revision was supposed to be filed at CMA before expiry of 42 days. He went on that, after expiry of the said 42 days, applicant cannot file an application to CMA. Mr. Basheka further submitted that, applicant was not negligent because there is only technical delay. He argued that, ***Mwendi's case*** (supra) is distinguishable because in the said case there was actual delay and the same was inordinate.

I have considered both the affidavit and the counter affidavit filed by the parties in support and opposition of this application and the rival submissions made thereto. I should, as a starting point, point out that, it is a settled principle of law that, grant or refusal of an application for extension of time is the discretion of the court. But, the discretion must

be exercised judiciously, based on the facts of each case. See the case of of [Mza RTC Trading Company Limited vs Export Trading Company Limited](#), Civil Application No.12 of 2015 [2016] TZCA. Again, for an application for extension of time to be granted, applicant is supposed to show good cause for the delay. In fact, Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 is loud to that position. The said Rule provides:-

"The court may extend or abridge any period prescribed by these rules on application and on good cause shown, unless the court is precluded from doing so by any written law."

It was deponed by the applicant that, initially she filed Revision No. 162 of 2023 within time but the said application was struck out on 12th September 2023 after the court has upheld the preliminary objection raised by the respondent due to failure of the applicant to file at CMA the Notice to seek Revision(CMA F10). That fact was not disputed by the respondent. In fact, the personal representative of the applicant submitted that the delay is technical and not actual. I agree with him. I should point out that technical delay is a ground for extension of time. See the case of the case of **William Shija v. Fortunatus Masha** [1997] TLR 213 and [Emmanuel Rurihafi & Another vs Janas Mrema](#) (Civil Appeal 314 of 2019) [2021] TZCA

332. In fact, in [Rurihafi's case](#) (supra) the Court of Appeal held *inter-alia* that: -

"In the circumstance, we have no hesitation to hold that, as the incompetent appeal was filed within time and the appellants were, as a result of their default to attach a copy of the ruling, penalized by having their appeal struck out, the prosecution of the incompetent appeal constituted sufficient cause for extension of time."

In the case of [Philemon Mang'ehe t/a Bukine Raders vs Gesso Herbon Bajuta](#) (Misc. Civil Application No. 374/02 of 2022) [2023] TZCA 17672 (29 September 2023) it was held by the Court of Appeal that:-

"For the avoidance of doubt, technical delay is applicable in a situation when the first appeal or application was timely filed but failed to proceed due to some other factors."

In the application at hand, applicant filed Revision No. 162 of 2023 within time but it was struck out for want of the notice to seek revision(CMA F10). It was therefore correctly submitted by Mr. Basheka that, the delay is technical and not actual one. Mr. Basheka, submitted that applicant delayed for 22 days and that the same is justifiable. In the case of [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 (21 February 2020) it was held *inter-alia* that: -

"As such, the time taken by the applicant in seeking leave, that is, counting from the time the applicant's initial application for leave was struck out to the time when the application for leave was found to be overtaken by operation of the law is in fact, a technical delay which is explicable and excusable... After, the latter application was struck out the applicant took hardly a month to file the present application seeking for extension of time to file an appeal. In other words, the applicant was diligent all along in pursuing his rights to appeal"

It is my view that applicant was not negligent and there is no proof.

It was submitted by counsel for the respondent that applicant was supposed to file an application for extension of time at CMA and that she was supposed to move CMA under the provisions of Rule 34(1) of GN. No. 42 of 2007 (supra). With due respect to the learned counsel for the respondent. Rule 34(1) of GN. No. 42 of 2007(supra) has nothing to do with either extension of time or the notice to seek revision(CMA F10). Rule 34(1) is in part III of GN. No. 42 of 2007 (supra) under the heading "workplace discrimination" and relates to selection of employees at the time of recruitment. The Notice to seek Revision(CMA F10) is made under Regulation 34(1) of the Employment and Labour Relations(General) Regulations, GN. No. 47 of 2017. There is neither regulation in the said GN. No. 47 of 2017 providing time within which the said Notice must be filed at CMA nor relating to extension of time within which to file the said Notice. It is my view that, the party

aggrieved with CMA award, cannot file at CMA, the Notice to seek Revision after expiry of the 42 days provided under section 91(1)(a) of the Employment and Labour Relations Act[cap 366 R.E. 2019] within which the party can file Revision before this court. It is my considered view that, the notice to seek Revision must be filed within 42 days and not thereafter. Therefore, submissions by counsel for the respondent that, applicant was supposed to file at CMA, an application for extension of time within which to file the Notice to seek Revision cannot be valid. Since there is no Regulation in GN. No. 47 of 2017 allowing the party who has been out of time to file an application for extension of time at CMA, the only recourse is for the party to file an application before this court seeking extension of time within which to file the notice to seek revision. I therefore find that applicant properly moved the court to extend time.

For the foregoing and in the upshot, I find that the application is merited and I hereby grant applicant Seven(7)days within which to file the notice to seek Revision and the intended revision.

Dated at Dar es salaam this 16th February 2024



B. E. K. Mganga
JUDGE

Ruling delivered on 16th February 2024 in chambers in the presence of Joseph Basheka, Personal Representative of the Applicant but in the absence of the respondent.



A handwritten signature in black ink, appearing to be 'B. E. K. Mganga'.

B. E. K. Mganga
JUDGE