

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

MISCELLANEOUS LABOUR APPLICATION NO. 2604 OF 2024

NMB PLC APPLICANT

VERSUS

SARAH RICHARD HAMZA RESPONDENT

RULING

18th & 19th March, 2024.

CHUMA, J.

This ruling is in respect of the application for an extension of time to lodge a notice of appeal to the Court of Appeal against the decision of this Court by Hon. Kamana, J. in Labour Revision No. 30 of 2023 dated 8th day of December, 2023.

The application is preferred under *Section 11(1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019* and supported by an accompanying affidavit sworn by SILWANI GALATI MWANTEMBE.

When the matter was called on for hearing, the applicant represented by Dr. Mwaisondola, Advocate and the respondent appeared in person.

Submitting in support of the application Dr. Mwaisondola, Advocate for the applicant first prayed the filed affidavit, sworn by Mr. Sivani Galati Mwantembe be adopted to form part of his submission and court record.

He went on to contend that in the instant application, the applicant is seeking a court order to extend the time to lodge a notice of appeal to the Court of Appeal against the decision of the High Court (Labour Division) at Mwanza in labour Revision No. 30 of 2023.

According to the affidavit, the applicant was dissatisfied with the High Court decision delivered on 15.12.2023. The very decision is annexed in the filed affidavit as annexure GLC/A. Though at page 9 of the decision is dated 8.12.2023 delivered by Hon. Kamana, J.

Under S. 11(1) of the Appellate Jurisdiction Act Cap 141 RE. 2019 this court is empowered to extend time when the applicant failed to lodge a notice to the court of appeal within time.

The words used there are may which implies the discretion of the court. However, such discretion has to be used Judicially where there are sufficient grounds given.

Dr. Mwaisondola further argued that the notice of intention to appeal to the CAT has to be lodged before the High Court within 30 days from the

date of the decision as per Rule 83 (1) of the Court of Appeal Rules 2009. And that from 15.12.2023, 30 days ended on 15th January, 2024, while this application was lodged before this court on 2.2.2024.

The main reason for the delay in lodging the notice of appeal is that after the decision of the High Court, the advocate Mr. Galati emailed the applicant on the verdict of the revision on the same date as per paragraph 4 of the affidavit. On 9.12.2023 the applicant instructed the advocate to lodge a notice of appeal to CAT. Unfortunately, the email went to the spam mail folder which is rarely open. And that from 15th December, to 31st January, 2024 the court was on vacation and the court business resumed on 1.2.2024.

From 15.12.2023 about four working days was a public holiday that as Christmas, New Year etc. The applicant's advocate then failed to know the existence of the applicant's mail in spam. He however was quick to respond and worked on the instruction by the applicant immediately that's why the application was lodged on 2.2.2024.

In paragraph 9 of the affidavit, it is well stated that the intended appeal is tainted with illegality, especially on pages number 6,7 and 8 of the ruling

in which the awarded figure was reached wrongly as it was based on an unknown formula, and sources of information are as well unknown.

Even the ruling itself, the applicant was the respondent in the Labour Revision No. 30 of 2023, the applicant was termed as NMB PLC and the same error remains unrectified to date.

He finally prayed the application be allowed as requested.

In rebuttal, Ms. Sarah Richard Hamza the respondent submitted that she noticed some facts which are not in order. According to the reference number the application indicates to have been lodged on 11.2.2024. In hard copy, the affidavit was signed on 9.2.2024 and was served to me on 21.2.2024. She was then wondering why those days if at all the application was lodged on 2.2.2024.

As to the issue of the email by the applicant to his advocate, she doubted and that if at all the email is form 18.12.2023 and was copied to about 8 people is it possible the email went into the spam folder for all 8 peoples? She then challenged the submission of Dr. Mwaiondola, Advocate in the alleged point as the reason for the delay.

The respondent further argued that the applicant wants to use the cited provision of Law i.e. S. 11(1) of the Appellate Jurisdiction Act Cap 141

to delay the case. They started working on this matter after her letter dated either 6 or 7.2.2024 to NMB requesting execution of what was decided by the High Court. On her side, however, she prayed this court to allow the prayed application to avoid delays. According to her this matter has been pending in court for almost 9 months. She then conceded to the applicant's prayer to proceed with the matter ahead.

As to the issue of the source of information raised by Dr. Mwaisondola, Advocate, its source is from CMA then to the High Court. Its base is a revision from CMA. As to the name of NBM instead of NMB in her view is just a typing error and a minor defect which can easily be rectified.

In his brief rejoinder Dr. Mwaisondole, Advocate thanked the respondent for not objecting to the application and prayed the sought order of cost be waived. Regarding the issue of dates, Dr. Mwaisondola stated that there are several series of event in filling matters before the court including online filling. He at the end insisted on his prayer for a grant of the instant application.

Having considered the parties' submission and after going through the court records and the relevant laws, the court has found the issue to determine in this application is whether the applicant has established

sufficient or good reasons for the delay in filing a notice of appeal in the court within the prescribed time.

It is well known that where the intended appellant has filed to lodge the notice of appeal in the High Court within the time prescribed by the law, the High Court is vested with power by section 11 (1) of the Appellate Jurisdiction Act to extend the time within which to file notice of appeal to the court of appeal, it is also a settled law that in any application for extension of time, the applicant is required to state sufficient cause for his delay.

What amounts to sufficient or good cause has been discussed in a range of cases including the Court of Appeal case of **John Mosses and Three others Vs. The Republic**, Criminal Appeal No. 145 of 2006 where the position of the law stated in the case of **Elias Msonde Vs. The Republic**, Criminal Appeal No. 93 of 2005 was quoted. The Court of Appeal stated:

"We need not be labour the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part"

It was also stated by the Court of Appeal in the case of **Blue Line Enterprises Ltd. Vs. East African Development Bank**, Misc. Application No. 135 of 1995 (unreported) that:

“It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by court.”

That being the position of the law concerning an application for an extension of time as required by the law the court has found the reason advanced by the applicant to substantiate his delay was that; the first is the failure of the applicant’s advocate to see the instruction by the applicant to lodge a notice of appeal after decision an instruction via email which went to spam folder rarely open by the applicant’s advocate. The second reason is the existence of public holidays from December to January and court vacation from 15th December to 31st January, 2024 in which only matters of urgency are being entertained by the court. And after all that the advocate filed the application promptly. Another reason in support of this application as per paragraph 9 of the affidavit, is that the intended appeal is tainted with illegality, especially on pages number 6, 7 and 8 of the ruling in which the

awarded figure was reached wrongly as it is based on an unknown formula, and sources of information is as well unknown.

The applicant's reasons for delay though challenged by the respondent for instance on the issue of failure of the applicant's advocate to see the email purported to have been sent to the spam folder which according to the respondent was copied to 8 peoples hence is unbecoming to have not received information in time. But also, the issue of filling out the instant application which even the applicant's advocate in his rejoinder submission failed to explain exhaustively.

On the other hand, the said challenge in my view does not weaken the reasons for the delay submitted by the applicant's advocate. More so the respondent in her reply principally had no objection to the application and according to her to avoid delay it is better this application be granted. Despite her admission reasons for delay as per the above discussion and position of law have to be addressed.

Having taken into consideration the position of the law stated in the cases cited hereinabove together with the position of the law stated in the case of **Yara Tanzania Limited** (supra) where Kenyan cases of **Savings and Loan Kenya Ltd Vs. Onyacha Bwomonte**, Civil Application No. 70

of 2004 and **Belinda Murai & others Vs. Amos Wainaina**, Civil Application No. 9 of 1978 were cited, in those cases the court held that, the court should not keep the door of justice closed as the duty of the court is to dispense justice to the parties. This court has found that the applicant advanced reasonable and sufficient cause to warrant this court think of allowing the sought order which I do hereby do. As a result, the application is granted and the applicant is given fifteen (14) days from the date of this ruling to file in court the notice of intention to appeal to the Court of Appeal. Owing to the nature and circumstance of the instant application parties should bear their own cost. I so order.

DATED at **MWANZA** this 19th day of March, 2024.




W.M. CHUMA
JUDGE

Ruling delivered in court in the absence of the parties in dispute this 19th day of March, 2024.


W.M. CHUMA
JUDGE