

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 64/18 OF 2020

TANZANIA BREWERIES LTD APPLICANT
VERSUS

LEO KOBELO RESPONDENT

**[Application for Extension of Time to file a memorandum and record of
appeal from the judgment and decree of the High Court (Labour Division) at
Dar es Salaam]**

(Mashaka, J.)

Dated the 29th day of September, 2015

in

Revision No. 211 of 2014

RULING

22nd February & 12th March, 2021

MWAMBEGELE, J.A.:

Before me is an application in which the applicant, Tanzania Breweries Ltd, moves the Court to extend time within which to lodge a memorandum and record of appeal against the decision of the Labour Division of the High Court (Mashaka, J.) delivered on 29.09.2015 in Revision No. 211 of 2014. The application has been made under the provisions of rule 10 of the Tanzania Court of Appeal Rules (the Rules). It is supported by an affidavit deposed by Huruma Ntahena, principal officer of the applicant. No affidavit in reply was filed to contest it.

When the matter was called on for hearing on 22.02.2021, the applicant appeared through Mr. Nuhu Mkumbukwa, learned advocate and the respondent had the services of Mr. Julius Kalolo Bundala, also learned advocate. At the very outset, Mr. Bundala rose to tell the Court that the respondent had no objection to the application and that he had lodged a notice to that effect on 22.05.2020. The learned counsel thus had no qualms if the application would be granted and the applicant given the extension sought. He only prayed that there should not be made any order as to costs.

Given the concession by the respondent's counsel, Mr. Mkumbukwa prayed that the application be allowed and the prayers granted as prayed. He did not press for costs.

This application was not contested. However, it is the practice of this Court that the mere fact that an application has not been contested by a respondent does not give an applicant the right to be granted the extension sought - see: **M.B. Business Limited v. Amos David Kasanda and Two Others**, Civil Application No. 66 of 2014 (unreported). That is the reason why I retreated to compose this ruling despite the concession by the respondent.

It is now settled law that an application of this nature will only be granted upon the applicant showing good cause for the delay. Authorities for this point are innumerable – see: **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015, **Sebastian Ndaula v. Grace Rwamafa (legal personal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014, **Yazid Kassim Mbakileki v. CRDB (1996) Ltd Bukoba Branch & Another**, Civil Application No. 412/04 of 2018 and **Tanzania Bureau of Standards v. Anitha Kaveva Maro**, Civil Application No. 60/18 of 2017 (all unreported), to mention but a few.

Having scanned through the uncontested notice of motion, the founding affidavit, the written submissions by the applicant as well as the brief oral submissions before me by the two trained minds for the parties during the hearing, I am satisfied that the appellant has shown good cause for the delay to trigger the Court grant the extension sought. The applicant was dissatisfied by the decision sought to be impugned and timely filed the relevant notice of appeal and finally preferred in the Court Civil Appeal No. 17 of 2016. That appeal was struck out by the Court on the ground that no leave of the High Court was sought and obtained before lodging the appeal.

Following the striking out of the appeal, the applicant returned to the High Court to seek an extension of time within which to file a notice of appeal and to apply for the required leave. The two applications were granted and the applicant filed a notice of appeal as well as an application for leave to appeal to the Court. However, the application for leave was refused. The applicant filed another application in the Court but the same was withdrawn on 21.02.2020 on account of the fact that leave to appeal to the Court of Appeal from the decisions of the Labour Division of the High Court, was no longer a legal requirement in view of the ruling of the Full Bench of the Court in **Tanzania Teachers Union v. The Chief Secretary & 3 Others**, Civil Appeal No. 96 of 2012 (unreported).

The applicant has deposed at para 15 of the founding affidavit that the applicant's advocates took initiatives to communicate and obtain instructions from the applicant including communicating with the Court and obtain a copy of the order which was made available to the advocate on 27.02.2020 and the present application was lodged on 03.03.2020.

I agree with the applicant that she has been diligently and honestly in his quest to appeal against the decision of the Labour Division of the High Court sought to be challenged. After the application in the Court was

withdrawn on 21.02.2020, she obtained a copy of the order thereof on 27.02.2020 and lodged the application on 03.03.2020. That was prompt enough. I am satisfied that the application has explained away every day of delay to move the Court grant the extension sought.

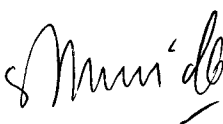
In the end, I find merit in this uncontested application and allow it. The applicant is given sixty (60) days reckoned from the date of delivery of this ruling within which to lodge the memorandum and record of appeal. This being a labour related matter, I make no order as to costs.

DATED at DAR ES SALAAM this 5th day of March, 2021.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

The ruling delivered this 12th day of March, 2021 in the presence of Ms. Elizabeth John, learned counsel for the Applicant and Ms. Genoveva Kalolo, learned counsel for the Respondent is hereby certified as a true copy of the original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL