

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT TANGA**

**CIVIL APPLICATION NO. 145/12 OF 2023**

**JAMES GIDEON KUSAGA.....APPLICANT**

**VERSUS**

**REGISTERED TRUSTEE OF THE NORTH  
EASTERN DIOCESE OF THE EVANGELICAL  
LUTHERAN CHURCH IN TANZANIA.....RESPONDENT**

**(Application for extension of time from the decision of the High  
Court of Tanzania, at Tanga)  
(Mkasimongwa, J.)**

**dated 08<sup>th</sup> day of November, 2021  
in  
Labour Revision No. 24 of 2020**

.....

**RULING**

8<sup>th</sup> May, 2023

**KITUSI, J.A.:**

This is an application for extension of time under rule 10 of the Tanzania Court of Appeal Rules, 2009, the Rules. The Applicant, a former employee of the respondent lost at the Commission for Mediation and Arbitration (CMA) in an action for unfair termination and before the High Court on revision. He intends to apply to the Court for revision, but he first seeks for extension of time within which to do so.

There are two affidavits to support the application, one by the applicant and the second by one Noelina Bipa Ibrahim a pro bono advocate for the applicant. The applicant's affidavit makes an account for the delay from 8<sup>th</sup> November, 2021 when judgment of the High Court was delivered to 31<sup>st</sup> January, 2022 when the certificate of delay was supplied to him for appeal purpose. It should be noted that after the decision of the High Court, the applicant had an appeal in mind and timely lodged a notice of appeal. If the applicant had pursued that intended appeal, there would be no need to make this application for extension of time. What happened then?

Ms. Ibrahim's affidavit explains that it was on her legal advice that the idea of a revision instead of an appeal was conceived, making this application necessary because the certificate of delay earlier issued would not be useful in the circumstances.

The application is contested by the respondent whose Principal Officer took two affidavits in reply challenging the competence of the intended application for revision. It also questions the supporting affidavits for not specifying the number of days to be accounted for and that no good cause has been shown to account for the delay.

At the hearing, Mr. Thomas Kitundu, learned advocate argued the application on behalf of the applicant referring to the supporting affidavits. Mr. Henry Njowaka, learned advocate for the respondent contested the application on the ground that the applicant has not accounted for each day of the delay as required. He cited the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** Civil Application No.2 of 2010 (unreported)

As earlier intimated, this application would hardly have been necessary if it had not occurred to the applicant's advocate that a revision was a better option. Having read the affidavits and heard the learned advocates, the period that needs to be accounted for is between 15<sup>th</sup> march 2022 when the idea of a revision was hatched to 25<sup>th</sup> March, 2022 when this application was lodged.

Here before me, Mr. Kitundu submitted that that period of ten days was spend in consulting and preparing the documents related to the application. Mr. Njowoka would not say whether this period is inordinate or not.

I have considered the peculiar circumstances of this case in which the applicant was initially within time to file an intended appeal but for an advice

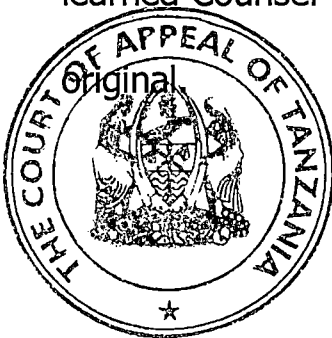
from a lawyer who preferred a revision. Certainly, the delay is not of the applicant's making and cannot be blamed on him. This change of course is, in my view, sufficient to explain the ten-day delay which is not inordinate in the obtaining circumstances.

For those reasons, I grant this application and order the applicant to lodge the intended application for revision within 60 days of the delivery of this ruling. I make no order of costs, this application having originated from employment proceedings.

**DATED at TANGA** this 8<sup>th</sup> day of May, 2023.

I. P. KITUSI  
**JUSTICE OF APPEAL**

The Ruling delivered this 8<sup>th</sup> day of May, 2023 in the presence of Mr. Thomas Kitundu learned Counsel for the Applicant and Mr. Henry Njowoka, learned Counsel for the Respondent is hereby certified as a true copy of the



  
R. W. CHAUNGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**