**IN THE COURT OF APPEAL OF TANZANIA**

**AT IRINGA**

**(CORAM: LILA, J.A., KITUSI, J.A. And MASHAKA, J.A.)**

**CIVIL APPEAL NO.310 OF 2022**

**BLASTUS ALOIS MGEGELA ..... APPELLANT**

**VERSUS**

**BOARD OF TRUSTEES OF THE TANZANIA NATIONAL PARKS ..... RESPONDENT**

**(Appeal from the Ruling of the High Court of Tanzania at Iringa)**

**(Mlyambina, J.)**

**dated the 29th day of July 2022**
**in**
**Misc. Labour Application No. 16 of 2020**

.....

## JUDGMENT OF THE COURT

13th & 22nd March, 2024

**LILA, J.A.:**

This appeal arises from the decision of the High Court in Miscellaneous Labour Application No. 16 of 2020 in which the appellant, Blastus Alois Mgegela, was denied extension of time to file a revision application in the High Court (Labour Division) against the decision of the Commission for Mediation and Arbitration (the CMA) sitting at Mafinga in Labour Dispute No. CMA/SER/202/2016. The application was predicated under Rule 24(1), (2) (a), (b), (c), (d), (e) and (f) (3) (a), (b), (c) and (d)and 11 (b) and 55 (1) and 56 (1) of the Labour Court Rules, GN No.

106 of 2007. The appellant had relied on technical delay as a reason for seeking extension of time to file an application for revision. The High Court found no merit in the application and dismissed it on the ground that the appellant failed to account a delay of seventeen (17) days. Aggrieved, he has preferred this appeal.

The appellant was an employee of the respondent since 1968 working as a Park Ranger. He was later promoted to the rank of Sergeant (Sgt). In 1990, he was transferred from Mikumi National Park to Serengeti National Park. According to him, on the 11th day of February, 1991 while on leave, he went to Mikumi National Park to claim for his promised reward for his good work of chasing poachers and capturing elephant tusks and a fire arm. The respondent did not live to its promise. The appellant sought help from the Minister of Home Affairs, but in vain, only to find himself being served with a letter of termination from employment on 13/12/2013. He sought for help from his workers association (CHODAWU) so that he could be paid his terminal benefits, but that did not work out to his expectation hence he referred the matter to the CMA at Musoma. Later, the matter was transferred to CMA at Mafinga. The matter was dismissed at the stage of mediation.

Aggrieved, his first application for revision to the High Court was struck out for being incompetent. Undaunted, he wished to refile another

application before the same court, but was late prompting him to, first, prefer an application before the High Court for extension of time to lodge the application for revision. Apart from narrating in detail the background of the matter as above summarised, the appellant, in paragraph 14 of his affidavit supporting the chamber summons, averred: -

> *"14. THAT, the failure to file Labour Revision on time was neither intentionally no negligently done but was due to factors as explained above."*

The application for extension of time before the High Court was resisted by the respondent. As hinted above, the High Court dismissed it because of the appellant's failure to establish sufficient cause for the delay of 17 days. Reckoning the period of delay from 3/11/2020 when the appellant's previous application for revision was struck out to 30/11/2020, when the application for extension was lodged, it found that there were seventeen (17) days which were not accounted for.

The appellant's appeal to this Court is based on these three grounds: -

1. *That, the Hon. Judge of the High Court Labour Division, erred in law and fact to dismiss the appellant's application by failing to consider that, the delay was due to technical reason.*

2. *That, the Honourable Judge of the High Court erred in law and fact to decide in favour of the respondent without considering the strong reasons for the delay.*
3. *That, the Honourable Judge of the High Court erred in law and fact by ignoring to extend time in favour of the appellant despite the fact that the appellant established strong reasons for the delay.*

The record bears out that the appellant has all along personally pursued his rights without legal representation. He did the same before us. For the respondent, Ms. Ansila George Makyao, learned Senior State Attorney assisted by Mr. Bryson Peter Ngulo, learned State Attorney, appeared and resisted the appeal.

The substance of the appellant's appeal grounds, which he opted to argue them generally, was that it was not a case of him delaying to file the application for extension of time but him being delayed by the High Court to do so. It was a technical delay. Elaborating, he was forthcoming that the ruling striking out his application for revision, Labour Revision No. 26 of 2018, was delivered on 13/11/2020, a fact readily conceded by the respondent in the reply written submissions found at page 72 of the record of appeal and his own rejoinder submissions found at page 108 to 109 of the record of appeal, and he lodged the application for extension of time on 30/11/2020 following his tireless follow up for a copy of the

ruling which was served to him after ten (10) days had lapsed from when it was delivered. Arguing further, he said service to him of the copy was done by signing a dispatch book of the court which remained in court leaving him go without evidence to show the court. It was his belief that the court could exercise diligence to prove so by checking its records. He therefore disagreed with the learned Judge that the delay was of seventeen (17) days which caused to him dismiss the application for extension of time. He urged the Court to allow him extension of time to apply for revision application against the CMA decision in the High Court.

On her part, Ms. Makyao, like the appellant, argued the appeal generally resisting it having formed the view that it raises a sole issue whether the appellant accounted for the delay of seventeen. She fully associated herself with the reasoning and findings of the learned presiding Judge. Initially, she was adamant that the delay was not of seventeen days relying on the date indicated in the ruling striking out the appellant's application for revision which showed that *"Dated at Iringa this 03rd day of November, 2020"*. It suggested that there was a delay of twenty-seven (27) days. On the Court's prompting whether such was the date the ruling was delivered to the parties or the date the ruling was composed, she was not hesitant to state that it was the date the ruling was composed and she could not be able to show the date when such ruling was delivered.

Consequently, she accepted that the ruling which was composed on 3/11/2020 was delivered on 13/11/2020 reducing the days of delay to seventeen which she maintained that the appellant failed to explain away the delay. Augmenting her assertions, she made reference to various principles governing grant of extension time as were pronounced by the Court in **Oswald Mruma vs Mbeya City** , Civil Application No. 100/06 of 2018 which cited with approval the case of **Bushiri Hassan vs Latifa Lukio Mashayo,** Civil Application No. 3 of 2007, **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of Young Womens Christian Association of Tanzania,** Civil Application No. 2 of 2010 (all unreported) all insisting that, to succeed, an applicant has to show good cause for delay and that each day of delay must be accounted for.

Responding in respect of the appellant's assertion that a delay of ten (10) after the date the ruling striking out the application for revision was delivered to the date when he was served by the High Court with a copy of the ruling striking out the application for revision contributed to his delay to file the application for extension of time, Ms. Makyao disagreed with him contending that the appellant failed to prove so even though such arguments featured in his written submissions. In all, she

was insistent that those grounds ought to have been pleaded in the affidavit supporting the application which the appellant did not.

No material rejoinder arguments came from the appellant other than reiterating that the delay was caused by the High Court and prayed that time be extended to allow him to lodge an application for revision in the High Court against the CMA decision.

Having studied the complaints raised by the appellant and the arguments by both sides for and against the application, we think the crucial issue we are called to determine is whether, the appellant had established sufficient cause to warrant the High Court exercise its discretion to extend time.

Let us begin by stating the obvious that in applications of this nature it is trite law that grant of an application for extension of time is entirely in the discretion of the court. This discretion, however, has to be exercised judiciously and the overriding consideration is that the applicant must show good cause or sufficient cause for the inaction within the prescribed time. We also acknowledge and associate ourselves with principles stated in the cases cited by the learned Senior State Attorney.

Featuring prominently from the parties' contending submissions for our determination are two issues: **first**; whether the appellant placed

before the learned presiding Judge technical delay and being delayed by the court to serve him with the copy of ruling striking out his application for revision as good causes of delay, and **second**; if such reasons warranted grant of extension of time sought.

As our starting point, it appears both the learned Judge and the learned Senior State Attorney fell into a confusion as to the days the appellant ought to have accounted for delay. Both seem to have been in mind that the ruling striking out the appellant's application for revision was struck out on 3/11/2020. This is vivid from the learned Senior State Attorney's arguments before us and the learned Judge's at pages 24 and 25 of the record of appeal where he observed that: -

> *"Having gone through the application, the court is of the findings that the Applicant's previous application was struck out on 3rd November, 2020 and this application at hand was filed on 30th November, 2020 being seven-teen days from the date when the ruling was delivered."*

Working under the above view, the learned Judge held that reliance on technical delay as good reason for grant of extension of time is misplaced. He also held that such ground did not feature in the appellant's affidavit supporting his application for extension of time leading to a finding that there was no explanation for the delay of such period of 17 days relying on the Court's decision in **Osward Mruma vs Mbeya City**

citing the case of **Bushiri Hassan vs Latifa Lukio Mashayo** (both supra) which set as a legal position that each day of delay has to be accounted for which the appellant failed to do. With respect, we do not think that the learned Judge and the learned Senior State Attorney were right. If period of delay is reckoned from 3/11/2020, then by filing the application for extension of time on 30/11/2020, the period of delay could not be 17 days but 27 days. The mishap seems to have arisen due to failure to appreciate the fact, later conceded by the learned Senior State Attorney, that 3/11/2020 is the date the ruling was composed and not when it was rendered to the parties. Unfortunately, our perusal of the record of appeal did not enable us find the date when the ruling was delivered leading to the Senior State Attorney agreeing with the appellant that the ruling was delivered on 13/11/2020 as he stated under paragraph 6 of the affidavit supporting his application and recited by the respondent in the reply submission resisting the application for extension of time found at page 72 of the record of appeal. Further, it appears the respondent was aware of the ruling being delivered on 13/11/2020 as there is an admission of the same in the submission located at page 72 of the record of appeal where it is stated that: -

> *"That coming to the gist of the application we contend that, the applicant's application for Revision, application No. 28 of 2018 was struck out by this Hon. Court on 13.11.2020*

*for being incompetent. The applicant filed the instant application on 30.10.2020 being 17 days latter from the date the matter was struck out..."*

In the light of the above excerpt, there is no doubt that the ruling was rendered to the parties on 13/11/2020 and that there was simply arithmetical miscalculation of the period of delay. The actual period of delay was thus seventeen (17) days.

Having ascertained the period of time allegedly delayed to be seventeen (17) days, we now have to resolve the issue whether the appellant raised before the learned judge technical delay as a reason to seek grant of extension of time to file application for revision. The appellant called this a delay by the court pointing out that it took ten days for the High Court to supply him with the copy of ruling striking out his application for revision. Responding, Ms. Makyao was adamant that he did not. The record of appeal bears an answer to this issue. As indicated above, the appellant's affidavit provided a detailed process the case passed through and steps he took and in paragraph 14 of his affidavit, recited above, indicated that the delay was not intentional or due to negligence on his part but was occasioned by various factors unveiled in the preceding paragraphs.

Elaborating the averment in paragraph 14, in her written submission found at pages 68 and 69, he stated that: -

> *"Upon the striking out of the Revision No. 26 of 2018 the applicant became out of time to file another labour revision. The first labour revision was filed on time. The failure to file labour revision on time was neither intentionally nor negligently done due to technical delay in the sense that the original application was lodged in time but was struck out for being incompetent."*

The appellant went further to cite the case of **Fortunatus Masha vs William Shija and Another** [1997] TLR 154 to support his position. In response to the appellant's submission, the respondent, in the reply submissions at page 73 of the record of appeal, stated thus: -

> *"The applicant has wrongly opted to rely on* ***"technical delay"*** *to shield his lack of diligence which has occasioned this delay. The doctrine of technical delay does not apply automatically, it requires that the applicant must (sic) act promptly and diligently..."*

As a matter of general principle, grounds for any application ought to be shown in the chamber summons in the High Court and in the notice of motion in the Court but, it is now acceptable that such grounds, where omitted in the two documents, may be deduced from the supporting affidavit the rationale being that the two documents complements each

other. (see **The Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** [1992] TLR 387). We have examined both the chamber summons and the supporting affidavit. Admittedly, the appellant did not expressly state in those two documents that he relied on technical delay as a ground for seeking extension of time, but looking at the chronological events stated in his affidavit which supported his application for extension of time and the parties' responses as demonstrated above, it is clear that they were working under a common understanding that in paragraph 14 of the supporting affidavit, the appellant relied on such ground for seeking extension of time. The parties, having understood each other that way and acted accordingly, are thereby precluded or estopped from asserting otherwise. That said, the contention by the learned Senior State Attorney that **technical delay** was not raised as a ground in neither the chamber summons nor the supporting affidavit is devoid of merit.

We turn to the next issue if such reason or ground warranted grant of extension of time sought. Again, we have no doubt that the appellant had also informed the High Court that he spent some time in the High Court corridors as the respondent admitted this fact in the reply submission found at page 72 where it was categorically stated that: -

*"Despite a huge time the applicant purports to have wasted in corridors of this court, he has totally failed to account for the 17 days of delay."*

The appellant's reaction to the above contention by the respondent featured in the ruling dismissing the application for extension of time at page 22 of the record of appeal that: -

*"In his brief rejoinder, the applicant reiterated that the previous application was struck out on 13/11/2020 and the instant application was lodged on 30/11/2020. From the very day of the ruling, he was struggling to get a copy of ruling until 23rd November, 2020 when he was supplied with the same. Therefore, it was not his fault but it was the fault of the court as the applicant was availed with a copy of the ruling ten days later after the ruling. He prayed his application to be allowed."*

After due consideration of the parties' submissions, the learned Judge ruled out, at page 25 of the record of appeal, that: -

*"In his rejoinder, the applicant alleged that he was delayed by the court on ground that it took him ten days to get the copy of the ruling but there is no any sufficient evidence to prove the same. For that reason, it makes the allegation as a second thought not worth to be entertained by this court..."*

Before us, the appellant contended that after he was served with the copy of the ruling he signed in the dispatch book which remained with the court and the learned Judge ought to have checked with the registry for proof rather than holding that there was no proof and dismiss the application.

In our deliberation, we begin by stating that we have recited the above excerpts not without a purpose. We intended to show that that the appellant's arguments before us that he was delayed by the High Court for ten days is not novel. Unfortunately, we have perused the record and we could not find a letter by the Registrar of the High Court notifying him that the copy of ruling was ready for collection. Had the High Court bothered to check the record before it, it could have realized the truth or lies of the appellant, but it did not. The situation the appellant allegedly faced cannot easily be dismissed where it comes to issues of dispensing justice. Had the learned Judge paid due regard to the need to do justice which is an underlying factor in labour laws, there could be no harm on his part to satisfy himself of the merit of the appellant's allegation consistent with the provisions of Rule 17 and 55(1) and (2) of the Labour Court Rules, 2007 G.N No. 106 of 2007 (the Rules) since the court was also moved under rule 55(1) and 56(1) of the Rules which incline the court, when presiding over labour matters, to have regard to doing justice

without being unduly bound by the rules of evidence in civil proceedings. These provisions provide: -

> *"17.- The Court, for the purpose of dealing with any matter referred to it, shall be entitled to elicit all such information as in the circumstances may be considered necessary without being unreasonably bound by rules of evidence in civil or criminal proceedings which would have the effect of interfering for defeating the good ends of justice..."*

Rule 55(1) and (2) provide: -

> *"(1) Where a situation arises in the proceedings or contemplated proceedings which these rules do not provide the court may adopt any procedure that it deems appropriate in the circumstances.*
>
> *(2) In the exercise and performance of its powers and functions, or in any incidental matter, the court may act in a manner that it considers expedient in the circumstances, to achieve the objects of the Act and or the good ends of justice."*

And Rule 56(1) of the Rules provides that: -

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

These provisions permit a presiding Judge to adopt a procedure other than that provided by the rules for the purpose of achieving the

ends of justice. It is such relaxation of procedure that has caused the labour court be termed as a court of equity (see rule 3(1) of the Rules). The case of **Felician Rutwaza vs Word Vision**, Civil Appeal No. 213 of 2019 (unreported) demonstrates a situation where such principle applies. Therein, the learned judge, after striking out an application due to technical defects, ordered a fresh application be filed within fourteen (14) days which was complied with but it later found leave to refile that application was missing, and it again permitted the same be filed. When the adopted procedure was challenged before the Court, it was held that the learned judge acted in line with the provisions of rule 3(1) and 55(1) of Rules. Yet again, the need to relax rules of procedure at the expense of doing justice in labour matters was insisted in **Finca Tanzania LTD vs Wildman Masika and Eleven Others**, Civil Appeal No. 173 of 2016 (unreported) while discussing the The Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 GN No. 67 of 2007 and the Court had this to say: -

> *"There is nothing in the Mediation and Arbitration Guidelines Rules which calls for the strict application of Order XIII Rule 4 (1) of the CPC in the Arbitration proceeding before the CMA. Moreover, the Rules do not provide for any resort to the CPC where there is a lacuna in the procedure to be applicable in the CMA. Besides, to urge for the application of the CPC strictly where there is a lacuna*

*in the Mediation and Arbitration Guidelines Rules during arbitration process is, in our view, to defeat the very purpose of the said Rules which aim to make the procedure as simple as possible to attain substantive justice to the parties in view of the nature of the proceedings."*

By analogy, we think, had the learned judge acted consistent with the cited rules, he would have cross-checked with the registry and come up with a proper and just finding. The appellant cannot be left to suffer due to such omission. Without much ado, we hold that the appellant's allegation had merit and find that the delay of ten (10) days from 13/11/2020 needed not to be accounted for. That said, seven (7) days remaining, in our strong view, in a case where a party is pursuing his right to be paid terminal benefits following his termination from employment, consistent with the spirit of achieving justice, are not inordinate for a litigant to prepare and lodge an application for extension of time in court.

Without losing site, the learned Senior State Attorney referred us to various decisions of the Court insisting each day of delay should be accounted for. Neither of them arose from a labour matter hence were not considered and determined in line with the principle underlying determination of labour matters which permit a reasonable deviation from the usual procedures so as to achieve the justice of the case. The cited cases are, therefore, distinguishable.

In fine, we agree with the appellant that the delay to lodge an application for extension of time was contributed by the High Court. The refusal for extension was therefore unjustified. We quash the ruling and set aside the order denying him extension of time and substitute thereof an order granting him extension of time to lodge, in the High Court, a revision application against the decision by the CMA at Mafinga in Labour Dispute No. CMA/SER/202/2016. The intended application to be lodged within sixty (60) days of the delivery of this judgement.

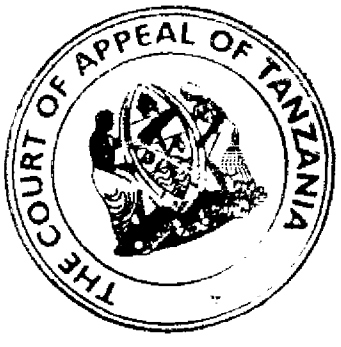
**DATED** at **IRINGA** this 21st day of March, 2024.

S. A. LILA
**JUSTICE OF APPEAL**

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

L. L. MASHAKA
**JUSTICE OF APPEAL**

The Judgment delivered this 22nd day of March, 2024 in the presence of the appellant in person and Ms. Sophia Manjoti, learned State Attorney for the Respondent is hereby certified as a true copy of the original.




J. J. KAMALA
**DEPUTY REGISTRAR**
**COURT OF APPEAL**