

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. LABOUR APPLICATION NO. 8 OF 2019

*(Arising from Application for Labour Revision No.11 of 2018 High
Court of Tanzania at Dodoma)*

NYANZA ROAD WORKS LTD APPLICANT

VERSUS

YASSIN MRISHO & 4 OTHERS RESPONDENTS

RULING

19th September, 2020 & 17th November, 2020

M. M. SIYANI, J.

Nyanza Road Works Ltd was the applicant in Labour Revision No. 11 of 2018 which was dismissed by this court's order dated 12th March 2019 for non-appearance. On 13th June, 2019, the applicant lodged the instant application for extension of time within which to apply for setting aside the said dismissal order. Supported with an affidavit of one Bakari Mugini Mabele who is the applicant's authorized officer, the application has been preferred under Rule 56

(1) (2) (3) and 24(1), (2)(a) (b) (c) (d) (e) (f) (3) (a) (b) (c) (d) of the Labour Court Rules, G.N No. 106 of 2007.

On 21st July 2020, I ordered that the application be disposed by way of filing of written submissions. While the applicant's submissions were prepared and filed by Mr. Sileo Mazullah, the learned advocate, the respondents had no legal representation and therefore they filed their joint reply submissions themselves. Through the filed submission, they contended that the delay to move the court to set aside the dismissal order was caused by the fact that its sole legal officer quitted the job without notice, or communicating the status of the pending Labour Revision No. 11 of 2018. As such, it was submitted, when the said application was called on 12th March, 2019 and consequently dismissed for no appearance, the applicant was unaware. It was stated that the applicant became aware of the dismissal order on 15th May, 2019 after perusing the court's record.

Counsel Mazullah believed that the applicant's legal officer was negligent by quitting the job without informing the applicant. He argued that negligence by an advocate constitutes sufficient reason

for delaying and so justifies enlargement of time. To support his argument, the learned counsel referred the case of **Felix Tumbo Kisima Vs TTCL Limited and Another** (1997) TLR 57 and **Yusufu Same** and **Hawa Dada Vs Hadija Yusuf**, Civil Appeal No. 1 of 2002.

The learned counsel went on to argue that the dismissal order was issued under inapplicable rule of law, because the said Rule 32 of GN No. 106 of 2007 was specific for appeals and not revision. He therefore invited the court to rectify the said mistake.

Replying the above arguments, it was submitted by the respondents through their joint submission that the applicant has failed to account for the delay because no genuine and sufficient reason for the delay has been adduced by the applicant. It was contended that the applicant's ground for the delay being based on quitting of the post by its legal officer, has no evidential proof and intends to merely mislead the court.

In their view, the respondents, believed that the applicant was required but failed to account for each day of delay and to substantiate their arguments, 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), was cited. It was submitted that for the court to exercise its judicial discretion and extend time; the applicant ought to account for the entire period of delay, which delay should not be inordinate and show diligence and not apathy, negligence or sloppiness in the prosecution of the action intended to be taken.

Through his rejoinder submission, counsel Mazullah, maintained that enlargement of time is basically exercised as a matter of judicial discretion. Regarding an advocate's negligence, the learned counsel invited the court to look on the substantive party of applicant in order to extend time. Counsel Mazullah believed that the dismissal order was tainted with illegality because Rule 32 of GN No. 106 of 2017 covers appeals and not revision.

Having revisited the records and what was submitted by the parties, it is settled that where extension of time is sought, the same may be granted upon demonstrating sufficient cause for the delay. What constitutes sufficient cause, depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay might or has occurred. See **Benedict Mumello Vs Bank of Tanzania** (E.A.L.R.2006) Vol. 1 and **Blueline Enterprises Ltd Vs East African Development Bank**, Civil Application No, 21 of 2012.

Initially through the filed affidavit, the applicant had one ground for extension of time that is he was unaware of the date of hearing of the dismissed application because Mr. Benard Joseph Banyikila who was a sole legal officer quit his post without issuing a notice or informing the applicant of the status of Revision No. 11 of 2018. As noted, through his submission, Counsel Mazullah added new ground on illegality of the dismissal order basing on the cited provision. The court record in Revision No. 11 of 2018 clearly indicates that Bakari Mugini Mabele who identified himself as the administrative officer of

the applicant's company was not only the one who prepared and signed the documents which initiated the application, but more so he used to enter appearance in court. For instance, the record shows it was Bakari Mugini Mabele who entered appearance on behalf of the applicant on 25th September 2018, 6th November 2018 and 4th December 2018.

In my considered opinion, being the one who initiated the proceedings by drafting and filing the necessary documents and entering appearance in court, Bakari Mugini Mabele an administrative officer of the applicant's company and who once again is a representative of the applicant in this application, knew the status of the dismissed application. Indeed, my perusal of the record, does not reveal that the said Benard Joseph Banyikila was a personal representative of the applicant neither was there any notice filed to that effect. Being not a representative in terms of section 43 of the Labour Court Rules, G.N No. 106 of 2007, I find the claim that the delay was caused by quitting of an office by the said Benard Joseph Banyikila and its effect to the applicant's awareness on the status of Revision No. 11 of 2018, baseless.

The above said, Revision No. 11 of 2018 was dismissed on 12th March, 2019. According to both an affidavit filed by Bakari Mugini Mabele and counsel Mazullah's submission, the applicant became aware of the dismissal order on 15th May 2019. The instant application was filed on 13th June, 2019. That is almost a month and no any explanation has been given by the applicant as to what prevented her to act promptly after being aware of the dismissal order.

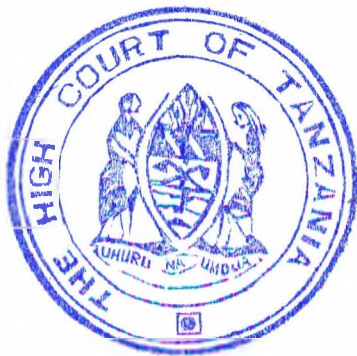
The requirement to account each day of delay has been emphasised by the court in numerous decisions such as case of **Bushiri Hassan Vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Karibu Textile Mills V. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016. In **Bushiri Hassan's** case, the court observed the following:

Delay, of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken.

In conclusion, Counsel Mazullah raised the question of illegality in his submissions. That claim does not trace its root in the filed affidavit. Advocate's submissions are not evidence. A ground for extension of time raised in the submission but which was not stated in the affidavit, is therefore a mere statement from the bar. That notwithstanding, an order dismissing an application for nonappearance of the applicant, cannot in my view, be considered illegal even where no provision has been cited let alone an oversight in citing the same.

In the event and for the reasons, I find the application without merits. I hold that the applicant has failed to illustrate any good cause that would entitle him extension of time as sought and as a result this application is consequently dismissed. Order Accordingly.

DATED at DODOMA this 17th November, 2020



M.M. SIYANI.
JUDGE