

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LABOUR APPLICATION NO. 08 OF 2020

DEONATUS BUNYOGAAPPLICANT

VERSUS

ORICA TANZANIA LIMITEDRESPONDENT

(Originated from consolidated Disputes No CMA/MUS/12/2020 and Labour Revision No. 07 of 2020)

RULING

18th Dec, 2020 & 19th March, 2021

Kahyoza, J.

This is an application for extension of time file an application for revision. **Deonatus Bunyoga** instituted an application seeking leave to institute a labour dispute out of time to challenge his termination. The Commission for Mediation and Arbitration (the **CMA**) dismissed the application because the applicant failed to adduce sufficient reasons for delay.

The undisputed fact is that **ORICA Tanzania Ltd** employed **Deonatus Bunyoga** in 2011 and terminated him on misconduct allegations on the 2nd July, 2019. On the 20th August, 2019 **Deonatus Bunyoga** filed an application for condonation, which (the **CMA**) dismissed for want of merit on the 2nd February, 2020.

The applicant filed an application for Revision before this Court timely. Unfortunately, this Court struck out the application on the ground that the application was instituted by an unqualified advocate.

This court struck out the application on the 15th June, 2020. **Deonatus Bunyoga** instituted the current application on the 1st July, 2020, that is 16 days from the date it was struck out.

The applicant's advocate **Mr. Majogoro** submitted that the applicant's reason of delay was technical delay. He stated that the applicant filed an application for revision (**Rev. No. 7/2020**), which this Court struck out because an unqualified advocate instituted it. The advocate cited the case of **Sospeter Crispine Maken V. Gladness Jackson Mnjinja** Misc. Civ. Appl. No. 78/2020. He submitted that the applicant spent the time from the date the application was struck out to the time he filed the application to find another advocate to represent him.

The respondent's advocate, Mr. Khamis, opposed the application for extension of time. He insisted that the applicant had no good cause for delay. He cited the case of **FINCA (T) Ltd & Another V. Boniface Mwakisa** Civ. Appl No. 589/2018.

The respondent's advocate submitted that this Court struck out **Rev. No. 7/2020** because it was instituted by an applicant who was practising illegally. He stated that the **Rev. Application No. 7/2020** was struck out on the account of negligence on the part of the applicant's advocate and the applicant. He submitted that the applicant had a duty to find out the status of the advocate. He submitted that negligence of an advocate is not a ground for extension of time. To buttress his submission, he cited the case of **Maneno Mengi Ltd & 30 Others V. Farida said Nyamacha**. [2004] TLR 391.

The respondent's advocate submitted that the applicant did not account for sixteen (16) days delay. He stated that this Court struck out the application for Revision on the 15th June, 2020 and on the 1st July, 2020, he instituted the current application. He stated that the applicant deposed that he got a copy of the ruling on the 23rd June, 2020 without supporting evidence.

He added that even if, the applicant got a copy of the ruling on the 23rd June, 2020, still, there are 8 days unaccounted for. He contended that the applicant was required to account for every day of the delay. He cited the case of **Isaack Sebegele V. Tanzania Potland Cement. Co. Ltd** Civ. Ref No. 26/2004 (DSM).

The respondent's advocate refuted the applicant's contention that an application for extension of time be granted on account of illegality. He contended that allegation of illegality must be a pure point of law. He cited the case of **FINCA (T) Ltd** (supra) to support his contention. He contended that the applicant did not explain the issue of illegality.

In his rejoinder, **Mr. Majogoro** insisted that his client accounted for all days of delay. He stated the alleged 8 days an unaccounted for, the applicant was looking for another advocate.

Having heard the rival submissions from both parties, the issue is whether the applicant has adduced good reasons for delay. The applicant's main reason for delayed was that he filed **Rev. No. 7/2020** on time, which this Court struck out because an unqualified advocate instituted it. The applicant's ground of delay is a technical delay. It is settled that technical delay is excusable. See the case **William Shija and another v.**

Fortunatus Masha [1997] TLR 213. The Court of Appeal stated the following -

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only **involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted.** In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."* (Emphasis added)

For that reason, the period from the time the applicant instituted **Lab. Rev. 7/2020** to the 15th June, 2020 when this Court struck out the application are excluded.

The applicant is required to account for period from 15th June, 2020 to 1st July, 2020, when he instituted the current application. It is now an established percept that person applying for extension of time has to account for each day of the delay. There is unbroken chain of authority to that the effect, one of such authorities, is the case **Elfazi Nyatega and 3 others Vs. Caspian Mining Ltd.** Civil Appl. No. 44/08/2017 (CAT unreported) where the Court restated its position that-

"The Position of this court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of the delay."

The applicant's ground for delay from 15th June, 2020 to 1st July, 2020 has been explained that he delayed to waiting for a copy of the

ruling, which he obtain on the 23rd June, 2021. The respondent's advocate submitted that the Judge informed them that a copy of the ruling would be available for collection on the 16th June, 2020. He refuted that the applicant had any reason to wait until 23rd June, 2021 collect a copy of the Ruling.

It was also submitted that the applicant even if, he obtained a copy of the ruling on the 23rd June, 2021 he did not account for 8 days of delay from 23rd June, 2021 to 1st July, 2021. The applicant was duty bound to account for all days of delay.

I examined the applicant's affidavit, unfortunately, he did not account for 8 days' delay. The applicant's advocate submitted, during hearing of this application, that his client delayed for 8 days looking for another advocate to represent him as he withdrew instructions from his former advocate. This was the submission from the bar, as the applicant's affidavit did not contain that averment. It is a settled position that reasons for delay must be reflected in the affidavit. Submissions are not evidence but explanations on the evidence already tendered. See the case of **Registered Trustees of the Arch Dioceses of Dsm vs. The Chairman Bunju Government and Others**, Civil Case No. 147 of 2006 CAT (unreported).

The applicant deposed under paragraph 11 that the reason for delay in filing the application for Revision is that he filed the first application on time but it was struck out on the reason explained in paragraph 8 above, and from 15th June, 2020 until 23rd June, 2020 he was making follow up on getting a typed copy of ruling to file the instant application. The applicant

did not account for the period from the time he obtained a copy of the ruling on 23rd June, 2020 to 1st July, 2020 when he instituted the instant application. The applicant's advocate explanation that the applicant spent the period from on 23rd June, 2020 to 1st July, 2020 looking for an advocate to represent him, was a submission from the bar, which cannot support the application.

The last issue is whether time may be extended because the decision of the CMA was illegal. I did not see this issue in the applicant's affidavit. The applicant deposed that there is an irregularity in the CMA award as the arbitrator misdirected himself to require the applicant to account for delay of 6 months while the actual delay was 15 days. The applicant's advocate did not elaborate on this issue. The respondent's advocate submitted that the alleged illegality ought to be point of law.

It is trite law that the alleged illegality must be that of sufficient importance and must also be apparent on the face of the record. This position was made clear by the Court of Appeal regarding the illegality of the impugned decision, in **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT unreported) made the following observation-


*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that **such point of law must be that of sufficient***

importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process"

I am of the firm view that the alleged illegality is not on the face of record. For that reason, that ground cannot support the application for extension of time.

In the upshot, I find that the applicant did not account for the period of 8 days from 23rd June, 2020 to 1st July, 2020. Consequently, I dismiss the application for failure to account for all days of delay. No order as to costs as this is a labour matter.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

19/3/2020

Court: Ruling delivered in the absence of the parties with leave of absence. B/C Catherine present.



J. R. Kahyoza

JUDGE

19/3/2020