

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

MISC. LABOUR APPLICATION NO. 28 OF 2022

(Originating from Labour Revision No. 32 of 2022 High Court of Tanzania at Mwanza, by Hon. Robert J.)

PAUL TUNGUCHA BUGAGIREAPPLICANT

VERSUS

G4S SECURE SOLUTIONS (T)LTD RESPONDENT

RULING

18th July & 8th September, 2023

ITEMBA, J.

The applicant herein was aggrieved by the decision of this court in Labour Revision Application No. 38 of 2022 issued on 20.6.2023 and had filed an application for extension of time to file a notice of appeal so as to appeal to the Court of Appeal.

The application is filed under rules 24(1)(2)(a) to (f), 24(3) (a) to (d), 55(1) (2) and 56(1) of the Labour Court Rules G.N 106 of 2007 and section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and it is supported by the applicant's affidavit in which grounds for the request are stated. On the other side, Arnold Rweshabula, Principal officer of the respondent filed an affidavit opposing the application.

At the hearing, the applicant was represented by Mr. Pascal Joseph learned advocate and the respondent had the service of Mr. Moses Kiondo.

Mr. Joseph, submitted that the grounds of the application in terms of the applicant's affidavit are that he was not notified on the date of Judgment. That, on 29th the court pronounced that Judgment will be issued on notice but he was never given any notice. That, when the decision was issued, he was at his home in Manyoni, and he noted that the court did not correct the illegality as regards the investigation report which was not considered by CMA. That, from there, he made research, sought legal advice and raised money to file this application and that is why he delayed.

The other ground raised is illegality in that the CMA did not consider the investigation report which contravenes the requirement under Rule 13(1) GN 42/2001 that termination should be based on fair procedure. The learned counsel finalized his submission by referring to **The Principal Secretary Ministry of Defence and National Service vs Divram Valambya (1992) TLR 185** which states that illegality is a sufficient reason for the extension of time.

In opposing the application, the respondent's counsel replied that the impugned Judgment was delivered on 20.6.2022 and this application was

brought on 22.9.2022 which is more than 3 months excluding the time to file notice. He added that, the applicant does not state as to when he became aware of the application and his affidavit does not reveal a ground for extension of time to be granted. That, there are several cases which provide as to what constitutes sufficient reasons including **Lyamuya Construction Company Limited v. Board of the Registered Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010. He argued that the applicant was legally represented since CMA up to the High Court and that if the applicant was seeking legal advice and raising money that would not stop him from filing a notice of appeal within time.

That, in respect of **Lyamuya Construction** (supra), the applicant ought to account for a period of delay of 25 days apart from giving a general explanation. And, the delay could not be excessive that the applicant has delayed for more than 3 months, a delay which is inordinate. He finalized his submission by stating that the applicant cannot just hide in the bush of illegality but he should give reasons for delay.

Having considered the applicant's arguments, the issue is whether the applicant has shown a good cause for the extension of time to be granted. Section 11(1) of The Appellate Jurisdiction Act provides that:-

"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."

There are factors which the court considers when determining whether the applicant has advanced a good cause for delay. These factors though not exhaustive are such as; the length of the delay; the reasons for the delay; the degree of prejudice the respondent stands to suffer if time is extended; whether the applicant was diligent; and whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged. See the cases of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 and

Tanga Cement Company Limited vs Jumanne D. Masangwa and Another, Civil Application No. 6 of 2001 and (All unreported).

In the present application, the applicant claims that he was not notified by the court on the date of judgment. Having gone through the court's records in respect of the proceedings which led to the impugned judgment, indeed, at first, the judgment was scheduled for 29th of April 2022. However, on that date, the coram was not constituted. The judgment was later delivered on 20th June 2022 in the presence of both the applicant and respondent. Therefore, this allegation that the applicant was unaware that the judgement had been issued, is not supported by records.

On the issue that the applicant was preparing for this application and he was looking for legal advice and raising funds, to start with, the applicant has not been specific as to which days he was preparing for the application and which days he was raising funds so as to satisfy the court that he has actually accounted for each day of delay. Considering that the delay is more than 2 months, I agree with the respondent's counsel that this delay is inordinate. Regardless of the challenges he faced, if the applicant was not negligence he could have sped up and processed his appeal within time or in just a few days after the time set by the law. The first ground fails.

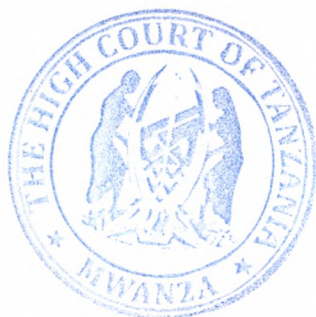
The second ground is illegality. It should be noted that not all types of illegality can be relied upon as a ground for extension of time. The applicant has complained about the investigation report that it was not considered by the CMA. Having gone through the records, this was not an issue tabled to be determined by the High Court, even the Court of Appeal will not be in a position to determine it because it was not a point of determination before the High Court. Raising the said issue at this stage is nothing but an afterthought and I find it baseless. Therefore, the second ground fails.

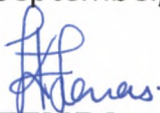
In the upshot, the application lacks merit and it is hereby dismissed.

As this application emanates from labour proceedings, there are no orders as to costs.

Right of appeal duly explained.

DATED at **MWANZA** this 8th Day of September, 2023.




L.J. ITEMBA
JUDGE
8.09.2023