

**IN THE HIGH COURT OF TANZANIA**  
**(MWANZA SUB-REGISTRY)**  
**AT MWANZA**  
**LABOUR REVISION NO. 94 OF 2016**

**BETWEEN**

**NDARO BWIRU SONGORA.....APPLICANT**

**AND**

**MWINUKO SECONDARY SCHOOL..... RESPONDENT**

**RULING**

*Date of Last Order:03/08/2023.*

*Date of Ruling:22/08/2023.*

**Kamana, J:**

The instant application was heard and determined by this Court (Hon. Rumanyika, J as he then was). The applicant was not satisfied by the decision and in that case, he appealed to the Court of Appeal. The main ground of appeal was that the High Court misdirected itself in holding that the applicant's personal representative had no right of audience before the Court. Further, the applicant challenged the decision

of this Court that determined the merits of his application without affording the parties the right to be heard.

Based on those grounds, the Court of Appeal allowed the appeal and set aside the ruling and drawn order. It also proceeded to quash the proceedings from where the High Court raised *suo mottu* the issue of the applicant's personal representative. The apex Court ordered that the revision be heard by another Judge.

When the matter was scheduled for hearing, Mr. Marwa Chacha Kisyeri, the applicant's personal representative, drew the attention of this Court that up to the time when the Court raised *suo mottu* the issue regarding his *locus standi* and determined the same, the respondent had never filed her notice of opposition and counter affidavit. He argued that according to Rule 24 (4) (a) and (b) of the Labour Court Rules, 2007 (GN No. 106 of 2007), it is mandatory for the respondent to file a notice of opposition and counter-affidavit during the hearing. With such failure, he prayed that the respondent should not be allowed to file them and the matter be heard *ex parte*. He cited the decision in the case of **Bukoki Kyoma v. FMA**, Misc. Labour Application No. 27 of 2022.

Submitting in rebuttal, Mr. Patrick Mhere, learned principal state attorney for the respondent contended that in the interest of justice, the

Court should apply the provisions of section 95 of the Civil Procedure Code, Cap. 33 [RE.2019] and order an extension of time to file notice of opposition and counter affidavit. He added that in the circumstances of this case, it is clear that justice is of paramount importance. Eventually, he prayed extension of 7 days to file notice of opposition and counter-affidavit.

In his quick rejoinder, Mr. Kisyeri maintained his position. He argued that the principal state attorney has failed to distinguish the case that he has cited. He argued further that the prayer for an extension of time by the respondent is devoid of merits as the objection in respect of the delay has been raised already. He kept on contending that the respondent has failed to state the reasons for the delay and to account for each day of the delay. In respect of section 95 of the Code, he contended that the principal state attorney has failed to mention the order he prayed under that section. He prayed that the prayers by the respondent be dismissed as there is no miscarriage of justice.

Having heard the competing arguments, I took time to peruse the records and found that on 24<sup>th</sup> August, 2018 when the matter was set for hearing, Mr. Ringia, state attorney for the respondent prayed for an extension of time to file a notice of opposition and counter affidavit. Such

prayer was objected to by Mr. Kisyeri, the applicant's personal representative as it offended the mandatory provisions of the Labour Court Rules which require the notice to be filed within 15 days after service of the application. Mr. Ringia did not cite any reason within the purview of the law to justify the delay other than stating that his colleague in the name of Mr. Goodluck Lukandiza handed the matter to him beyond the prescribed period of limitation. The prayer was not determined.

Now, the profound question which requires the attention of this Court is whether the raised concern by the applicant carries some significance warranting this Court to disregard the prayers by the respondent regarding the extension of time to file a notice of opposition. It is the argument by the applicant that the respondent has failed to adhere to provisions of the law therefore he must be invited to prove his case *ex parte*. This view is down rightly discounted by the respondent who holds the view that this Court has powers to allow him to file a counter-affidavit to restrain the occurrence of miscarriage of justice.

The current position of law is to the effect that Courts enjoy powers to grant or refuse an application for an extension of time within which to take some judicial steps. Such powers are discretionary and are exercised judiciously. The discretion entails the Court making decisions which are

logically sound, tracing their basis from the rules of law. This position was stated in the decision of **Nicholaus Mwaipyana v. The Registered Trustees of Little Sisters of Jesus of Tanzania**, CAT-Civil Application No. 535/8 of 2019 (unreported). The Superior Court of the land stated the following:

*'The power to extend time given under this provision is discretionary, but such discretion must be exercised judicially, meaning the making of a logically sound decision based on rules of the law. That requires the attention of the court to all the relevant factors and materials surrounding any particular case. These factors include the length of the delay, the reason for the delay, and whether or not there is an arguable case, among others.'*

In the case of **Mbogo v. Shah** [1968] EA 93 it was held as follows:

*'All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended.'*

In the famous decision of **Lyamuya Construction Company Limited v. Board of Trustees of YWCA**, CAT-Civil Application No. 2 of 2010 (unreported). The Court of Appeal of Tanzania illustrated key

conditions upon which grant of extension of time should be based, and these conditions are as follows:

*'(a) The applicant must account for all the period of delay.*

*(b)The delay should not be inordinate.*

*(c)The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*

*(d)If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.'*

In the instant matter, the respondent's prayer for an extension of time is established on the so-called '*interest of justice*'. He prays this court to invoke its discretionary powers established under section 95 of the Code to allow him to file a notice of opposition and counter affidavit out of the prescribed time. Now the question is whether this reason is good enough to constitute a sufficient cause. The answer to this question is negative. I say so because the respondent has failed to give out reasons for the delay. The fact that this Court enjoys discretionary powers to that effect does not mean that such powers can be exercised without proper reasons for the delay. The party that seeks to move the Court to extend time must come up with solid reasons and not a mere assertion that if the respondent

will not be given an extension of time to file a notice of opposition and counter affidavit it will lead to a miscarriage of justice. The law is clear under Rule 24 (4) (a) GN No. 106 of 2007 as rightly cited by the applicant that the respondent had fifteen days from the day which the application had been served on him. To me, prayers for an extension of time without further explanation on what happened with fifteen days provided under the law amounts to misuse of the Court process. The respondent ought to have informed this Court of the reasons for the delay and not otherwise.

In the upshot, it is my conclusion that the respondent has failed to demonstrate sufficient cause that justifies the exercise of the Court's discretion to grant the craved extension of time. In consequence, the matter will be heard *ex parte*.

It is so ordered.

**DATED at MWANZA** this 22<sup>nd</sup> day of August, 2023.



**KS KAMANA**

**JUDGE**