

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**  
**MISC. APPLICATION NO. 456 OF 2017**

**BETWEEN**

**FINCA TANZANIA ..... APPLICANT**

**VERSUS**

**HASSAN LOLILA ..... RESPONDENT**

**RULING**

**Date of Last Order 09/04/2018**

**Date of Ruling 17/04/2018**

**NYERERE, J.**

This is an application for extension of time to file Notice of Appeal made under Rules 24 (1), (2),(a)(b)(c)(d)(e)(f) and (3),(a)(b)(c)(d) (11), and Rule 56 (1) of the Labour Court Rules, GN No.106 of 2007. The applicant sought to move the court for the following orders;

- a) That this Honourable court may be pleased to grant an  
order for extension of time to file Notice of Appeal.**

**b)That the Honourable Court be pleased to grant any other orders and reliefs that it considers just and convenient to grant.**

This application was argued by way of written submission, Applicant was represented by Mr. Yusuf Sheikh Advocate, while respondent was in person.

Counsel for Applicant Mr. Yusuf Sheikh moves the court under Rule 56 (1) of the Labour Court Rules, GN No.106 of 2007 to invoke its discretion of the court and grant an application for extension of time upon good cause shown as it was observed in the case of Benedict Mumello V. Bank of Tanzania Civil Appeal No. 12 of 2002 that;

**"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that delay was with sufficient cause.....what amount to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application has been brought promptly; the absence of**

**any or valid explanation for the delay; lack of diligence on the Part of the applicant.”**

Counsel for Applicant Mr. Yusuf Sheikh in support of his argument referred another Court of Appeal case, Regional Manager, Tanroads Kagera V. Ruaha Concrete Company Limited, Civil Application No. 96 of 2007 in which the court observed;

**“...what constitutes sufficient reason can not be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time limited by the rules”**

Counsel for Applicant Mr. Yusuf Sheikh in advancing his reason for the delay he argued that applicant knew about the judgment and decree on 11<sup>th</sup> December 2017 when she was served with demand letter from respondents Advocate, requesting immediately satisfaction of the decree against Applicant.

Counsel for Applicant was of the view, by the time Applicant received demand letter, on 11/12/2017, time to lodge notice of appeal had already lapsed. Further Counsel for Applicant argued that Applicant could not lodge Notice of Appeal in time because he was not aware of judgment against her. That the Advocate who had instructions on the matter, failed to notify her of the outcome of the case.

Counsel for Applicant further argued, the delay to lodge Notice of Appeal is attributed to failure by Advocate who represented the Applicant in the revision application and cited the decision of the case of CMC Holding V. Nzioki (2004) 1 EA 23, Court of Appeal of Kenya. Counsel for Applicant therefore prays the court to adopt the wisdom of the Court of Appeal of Kenya decision in which it observed a litigant suffered loss through the mistake of Counsel. That the Applicant to be granted extension of time to file Notice of Appeal as the appeal has overwhelming chances of success. Counsel for Applicant therefore prays this court to exercise its discretion and grant the application.

In rebuttal Respondent argued that the reason for delay advanced by Applicant is not sufficient, that Applicant in her submission in chief

contended that she was not aware of the judgment against her, because her Counsel failed to notify her outcome of the case, and she learned the outcome of the case after she received a demand letter from Respondents Advocate.

Respondent was of the view Counsel for Applicant; Mr. Didace Respicious was present in court on 26<sup>th</sup> September, 2017 when court delivered the judgment. Further Respondent argued Counsel's failure to inform Applicant the outcome of case cannot be sufficient reason to warrant the court to grant this application. That negligence of Advocate is not sufficient reason citing the case of Calico Textile Industries LTD v. Pyraliesmail Premji (1983) TLR 28 and Umoja Garage V. National Bank of Commerce (1997) TLR. 109 in both cases it was observed that error committed by applicants counsel could not be blameworthy or warrant as sufficient cause to enlarge the time prayed.

Respondent went on to argue that if Applicant assertion that Mr. Didace Respicious failed to notify her on the outcome of the case, Applicant was supposed to ensure her former Counsel filed an Affidavit to explain the delay.

Submitting on the Applicant Cited Kenyan case, CMC Holding V. Nzioki (supra), Respondent argued the case is distinguishable, the case was in regard to ex parte award, dismissing the defense without appellant being heard. Respondent was of the view in the present matter, the Applicant is seeking extension of time to lodge Notice of Appeal., and the judgment was delivered in front of an Advocate. The Respondent prays the application be dismissed for lack of merit.

In rejoinder, Applicants Counsel Mr. Yusuf Sheikh reiterated his submission in chief, and went on to argue that the Applicant has placed before the court sufficient materials for it to grant extension of time to file Notice of Appeal.

Having gone through the submission by parties, Court record and the relevant laws, before embarking on the determination of this Misc. Application the court asked itself whether it has jurisdiction to determine this application.

This Court is conferred with powers to deal with the present application by Section 11 (1) of the Appellate Jurisdiction Act, [Cap 141 R.E. 2002] which 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 notice or making the application has already expired."**

However in the present application, Applicant has not moved the Court under Section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E 2002] in which confers this court with jurisdiction to determine the application extension of time to file notice of appeal, if an applicant has failed to lodge it within a prescribed time of 30 days as provided by rule 83 of the Court of Appeal Rules, 2009. Applicant only moved the court under Rule 56 (1) of the Labour Court Rules, GN No.106 of 2007.

It is to be noted this High Court only deals with Labour and Employment matters as described under Section 52 of the Labour Court Institutions Act, No.7 of 2004 and its powers to extend time has been provided under Rule 56 of the Labour Court Rules, 2007 which states that;

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

Therefore since the applicant in this court is seeking extension of time to file Notice of Appeal the appropriate provisions to move the court are Rule 56(1) and Rule 24 (1), (2), (3) and (11) of the Labour Court Rules 2007 read together with Section 11 (1) of the Appellate Jurisdiction Act. Failure to cite and include Section 11(1) as stated above renders the application to be incompetent and improperly before this court as the court lacks jurisdiction to determine it.

It is trite law that the issue of jurisdiction is so fundamental that a court can raise it *suomotto* and decide on the ground of lack of jurisdiction as held by CAT in the case of RICHARD JULIUS RUKAMBURA VS ISAACK NTWA MWAKAJILA and ANOTHER Civil Application No. 3/2004 at Mwanza Registry (Unreported) where Hon. Mrosso (JA) (rtd) observed and held:

**“That on a fundamental issue like that of jurisdiction a court can *suomotto*, raise it and**



**decide the case on the ground of lack of jurisdiction without hearing parties”.**

Therefore I proceed to struck out the present application for being incompetent, However, for the best interest of justice, applicant is hereby granted (14) fourteen days leave to file a proper application in accordance of provisions of law

It is so ordered.



**A.C. Nyerere**

**JUDGE**

**17/04/2018**