

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS APPLICATION NO. 407 OF 2022

CHANG YOU RECYCLING PLASTIC CO. LTD APPLICANT

VERSUS

MOHAMED SAID MAWELA 1ST RESPONDENT
JAMES BONIFACE MWAMPOSA.....2ND RESPONDENT
MOHAMED MKANDE KIVUGO.....3RD RESPONDENT
HUSSEIN ATHUMAN.....4TH RESPONDENT
EZEKIEL SIMON.....5TH RESPONDENT
SAID HASSAN DEGE.....6TH RESPONDENT
ASHA RAJABU.....7TH RESPONDENT
TATU ABASI.....8TH RESPONDENT
ZINDUNA ISSA.....9TH RESPONDENT
FLORA GABRIEL.....10TH RESPONDENT
GRACE WILSON11TH RESPONDENT
ANGEL PETER.....12TH RESPONDENT

RULING

*Date of last Order: 17/11/2022
Date of Ruling: 29/11/2022*

B. E. K. Mganga, J.

On 13th July 2022, this court (S.M. Maghambi, J) allowed revision application No. 35 of 2021 that was filed by the respondents that they were unfairly terminated and ordered the applicant to pay TZS

16,250,000/=. On 21st October 2022, applicant filed this application under Rule 24(1), 24(2)(a),(b),(c),(d),(e),(f), 24(3)(a),(b),(c),(d), 56(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 and any other enabling provisions of laws seeking (i) this court to extend time within which to lodge a Notice of Appeal with a view to appeal to the Court of Appeal and (ii) the court to extend time within which she can file letters requesting for copies of judgment, decree, proceedings and exhibits with a view to appeal to the Court of Appeal.

In the affidavit of Pan Xiu, the Director of the applicant in support of the application, the deponent deposed that, on 15th August 2022, applicant was served with the copy of the judgment of this Court(Hon. Maghimbi, J) and that applicant tried to settle the matter out of court but settlement failed. That, upon failure of out of court settlement, applicant opted to file an appeal before the Court of Appeal because there is illegality on the judgment of the court hence this application.

Opposing the application, Mr. Edward Simkoko filed both the Notice of Appeal and the Counter Affidavit.

When the application was called on for hearing, Makubi Kunju and Grace Msuya, learned Advocates, appeared, and argued for and on behalf

of the applicant while Mr. Edward Simkoko, a representative from TASIWU, a Trade Union, appeared and argued for and on behalf of the respondents.

Arguing the application, Mr. Kunju, submitted that, initially the parties showed indication to settle the matter out of Court but later on, they did not agree on the terms. He submitted further that, since applicant was aggrieved by the judgment and decree of the Court, she decided to file this application. He went on that, there is illegality on the decision of the Court because respondents were not unfairly terminated but termination was by mutual agreement. Counsel for the applicant submitted further that, the said illegality is apparent on the face of record. He submitted that when there is illegality, there is no need to account for each day of delay and cited the case of ***Brazafic Enterprises Ltd v. Kaderes Peasants Development (PLC)***, Civil Application No. 421/08 of 2021, CAT (unreported) to support his submissions. He further cited the case of ***Lyamuya Construction Company Ltd V. Board of Registered Trustee of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, CAT (unreported) to support his submissions that illegality is a good ground for extension of time.

During submissions, he conceded that it took applicant 63 days from the date of judgment to the date of filing Miscellaneous Application No. 349

of 2022 and 7 days from the date Miscellaneous Application No. 349 of 2022 was struck out to the date of filing this application. He argued that applicant spent 33 days attempting to settle the matter out of Court. During submissions, counsel for the applicant conceded that applicant has failed to account for 7 days after the first application was stuck out.

On his side, Mr. Simkoko submitted that applicant has no good cause and that there was no attempt to settle the matter out of Court. He submitted in the alternative that, even if assumed that there was such an attempt, the same did not bar applicant to file the Notice of Appeal. He went on that; applicant has not accounted for 33 days before her application was struck out and 7 days thereafter. He cited the case of ***Omary Ally Nyamalege (As the Administrator of the Estate of the Late Seleman Ally Nyamalege) & 2 Others v. Mwanza Engineering Works***, Civil Application No. 94/08 of 2017 CAT (unreported) to support his submissions that applicant was supposed to account for each day of delay.

On illegality, Mr. Simkoko submitted that for it to be a ground for extension of time, it must be apparent on the face of record and site ***Omary's case*** (supra) to that position. He argued further that applicant

had no intention of filing an appeal before the Court of Appeal but formed that opinion after being served with an application for execution.

In rejoinder, Mr. Kunju reiterated his submissions in chief and submitted further that, the counter affidavit filed on behalf of the respondents has general denial and does not state how respondents will be prejudiced if the application will be granted.

I have considered the affidavit in support of the application, the counter affidavit opposing the application and submissions made on behalf of the parties in this application. I should state from the outset that in an application for extension of time like the application at hand, applicant is required to show good cause for the delay for the same to be granted. Applicant has advanced one reason namely, out of court settlement between the parties but that the same aborted. It is my view that out of court settlement cannot be a good ground for extension of time. Applicant took that risk knowingly that there were two possibilities namely, success or failure of the alleged out of court settlement. She has therefore to bear that risk because out of court settlement cannot stop the law of limitation. This position is now settled as it was held by the Court of Appeal in the case of *M/s. P & O International Ltd v. the Trustees of Tanzania*

National Parks (TANAPA), civil Application No. 265 of 2020, CAT

(unreported) that: -

"It is trite that pre-court action negotiations have never been a ground for stopping the running of time...the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties...negotiations or communications between the parties...did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by the law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time."

Whether there was negotiation for the matter to be settled out court not, that cannot be a ground for extension of time. I therefore dismiss that ground.

It was submitted by counsel for the applicant that there is illegality on the impugned judgment because respondents were not unfairly terminated, rather, termination of their employment was by mutual agreement. It was held by the Court of Appeal in the case of **Omary Ally Nyamalege, Administrator of the Estate of the Late Seleman Ally Nyamalege & Others vs Mwanza Engineering Works**, Civil Application No. 94 of 2017 [2018] TZCA 230 that illegality is a ground for extension of time. In **Nyamalege's case** (supra) cited the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young**

Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 [2011] TZCA 4 to the position that not every alleged illegality can warrant extension of time. It was submitted by counsel by the applicant citing the case of **Brazafric Enterprises Ltd vs Kaderes Peasants Development (PLC)**, Civil Application No. 421 of 2021 [2022] TZCA 624 that once illegality is proved, no need to account for each day of the delay. With due respect to counsel for the applicant, I have read the said judgment of the Court of Appeal and find that it did not lay that principle. More so, the alleged illegality is not apparent on the face of record, that is to say, the alleged error is not the one that can be seen by one who rides and reads. It is not an obvious and patent mistake. It is not something which can be established without a long-drawn process of reasoning and it is not a point on which there may be two opinions. See the case of **African Marble Company Limited (AMC) vs Tanzania Saruji Corporation (TSC)**, Civil Application No. 8 of 2005 [2005] TZCA 87 and **Chandrakant Joshubhai Patel v. Republic**, [2004] TLR 218.

It was correctly submitted by Mr. Simkoko for the respondents that applicant was duty bound to account for each day of the delay but failed to discharge that duty. In fact, there is a litany of case laws to the position that in an application for extension of time, applicant must account for

each day of the delay. See ***Nyamalege's case*** supra and ***Lyamuya's case*** (supra) to mention but a few.

For all what I have discussed hereinabove, I find that there are no good grounds for extension of time. I therefore dismiss this application for want of merit.

Dated in Dar es Salaam on this 29th November 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 29th November 2022 in chambers in the presence of Aneth Kabairuka, Advocate for the Applicant and Edward Simkoko, from TASIWU, a Trade Union, for the respondents.



B. E. K. Mganga
JUDGE