

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

MISCELLANEOUS LABOUR APPLICATION NO. 204 OF 2022

BETWEEN

HARUNA R. C. MATTAMBO..... APPLICANT

AND

TANZANIA ELECTRIC SUPPLY COMPANY LTD..... RESPONDENT

RULING

*Date of Last Order: 25/07/2022
Date of Ruling: 15/08/2022*

B. E. K. Mganga, J.

On 7th June 2022, Haruna R. C. Mattambo, the herein applicant filed this application seeking the court to grant extension of time within which he can lodge the Notice of Appeal out of time to appeal to the Court of Appeal against the Ruling and order issued by this court (Hon. Arufan, J) on 24th May 2019. In his affidavit in support of the application, Daniel Haule Ngudungi, counsel for the applicant, deponed that on 24th May 2019, this court dismissed Miscellaneous Labour Application No. 588 of 2018 for want of merit. That, applicant filed Civil Appeal No. 168 of 2019 but the same was struck out by the Court of Appeal on 18th March 2022 for want of this court's leave. It was deponed further that, on 29th March 2022, applicant was supplied with a certified

order of the court striking out the said appeal. It was deponed further that, the delay of filing this application from the date of dismissal order by Hon. Arufani, J on 24th May 2019 in Miscellaneous Labour Application No. 588 of 2018 to 29th March 2022 is that applicant was prosecuting bonafide proceedings in this Court and the Court of Appeal. It was further deponed that, on 6th April 2022, applicant filed Miscellaneous Labour Application No. 126 of 2022 but the same was struck out for being incompetent and that leave was granted to refile a proper application.

Respondent filed the counter affidavit sworn by Howa Hiro Msefya, her advocate opposing the application. In the counter affidavit, it was deponed that, filing proceedings without adhering to procedures does not amount to bonafide proceedings.

By consent of the parties the application was disposed by way of written submissions.

Submitting in support of the application, Mr. Daniel Haule Ngudungi, learned counsel for the applicant argued that, for the court to exercise its discretionary powers in determining an application for extension of time, applicant must show good cause/sufficient reason for the delay as provided for under Rule 56(3) of the Labour Court Rules GN. No. 106 of 2007. Counsel submitted further that, applicant

established two reasons namely (i) technical delay and (ii) illegality of the decision. On technical delay, counsel submitted that on 11th June 2019, applicant filed a Notice of Appeal and successfully filed Civil Appeal No. 168 of 2019 but the same was struck out on 18th March 2022 for want of leave to appeal to the Court of Appeal. Counsel cited the case of ***Hamis Babu Bally v. The Judicial Officers Ethics Committee, the Chief Court Administrator, Judicial Service Commission and the AG***, Civil Application No. 130 of 2020 (unreported), ***Fortunatus Masha v. William Shija and Another*** [1997] TLR 1 to support his argument that technical delay is one of the good grounds for extension of time.

On illegality, counsel for the applicant submitted that applicant was denied right to be heard and that there was no proper committee during the disciplinary hearing. He cited the case of ***Tanzania National Parks (TANAPA) v. Joseph K. Magombi***, Civil Application No.471 of 2016 (unreported) to support his submissions that illegality constitutes a ground for extension of time.

It was submitted by counsel for the applicant that the ruling striking out the appeal before the Court of Appeal was served to the applicant on 29th March 2022 and that on 6th April 2022, he filed Miscellaneous Application No. 126 of 2022 that was struck out by this

Court for being incompetent. It was further submitted on behalf of the applicant that applicant spent 9 days preparing to file Misc. Application No. 126 of 2022 and 8 days in filing this application. Counsel submitted that, those days are reasonable and implored the court to find that the time spent in preparations to file this application was reasonable.

On the other hand, Howa Hiro Msefya, learned counsel for the respondent resisted the application submitting that counsel for the applicant was negligent by filing an appeal before the Court of Appeal prematurely without complying with the provisions of section 5(1)(c) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019]. Counsel cited the case of ***Yusuph Same and others v. Hawa Hadija Yusuph***, Civil Appeal No. 1 of 2002, CAT (unreported), Said ***Salum Kumbilo and Another v. Bakari Amir Kimbililo and 5 Others***, Misc. Land Application No. 762 of 2016, HC (unreported) and ***Andalus Corner Ltd v. Cotrida Crispine Haule***, Misc. Labour Application No. 259 of 2021, HC (unreported) to support his submissions that negligence of an advocate cannot be a ground for extension of time.

It was submissions by counsel for the respondent that there is no illegality in the award issued by the commission for Mediation and Arbitration and cited the ruling of this court in the case of ***Haruna Matambo v. TANESCO***, Misc. Labour Application No. 588 of 2018

(unreported) that is the subject of this application. Counsel for the respondent therefore prayed the application be dismissed for want of merit.

In rejoinder, counsel for the applicant submitted that section 5(1) (c) of the Appellate Jurisdiction Act was amended after applicant has filed the appeal before the Court of Appeal to require leave to be sought before filing an appeal of which it was not so previously. Counsel for the applicant argued that there was no negligence on part of counsel for the applicant.

I have carefully considered submissions of the parties in this application and find that it is undisputed that applicant was aggrieved by the Ruling of this Court (Arufani, J) in Miscellaneous Labour Application No. 588 of 2018 dated 24th May 2018. In the said application, applicant sought the court to extend time within which to file revision application for the court to revise an award issued on 28th July 2017 by the Commission for Mediation and Arbitration (CMA). It is also undisputed that applicant filed Civil Appeal No. 168 of 2019 between **Haruna R.C. Mattambo v. TANZANIA ELECTRIC SUPPLY COMPANY LTD**, the herein respondent. It is further undisputed that on 18th March 2022 the said appeal was struck out by the Court of Appeal for being incompetent. I have carefully read the Order of the Court of Appeal

striking out the appeal that was filed by the applicant and find that it was struck out for two reasons namely (i) absence of the record of Commission for Mediation and Arbitration (CMA) from which the appeal emanated and (ii) absence of leave to appeal before the Court of Appeal. In the said Court of Appeal Order it is recorded: -

"...Initially, Mr. Ngudungi sought leave of the Court to file a supplementary record of appeal to include the missing record of the Commission for Mediation and Arbitration (CMA) where the present appeal emanated. However, when the Court invited him to address it on the propriety of the appeal...Mr. Ngudungi readily conceded that the appeal is incompetent...the present appeal arose from the order of the High Court that dismissed the appellant's application for extension of time. Such an order falls under section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 R.E.2019 which requires leave to appeal to the Court...thus it is incompetent before the court..."

It was submitted by counsel for the applicant that he has filed this application based on two reasons namely that there is technical delay and that there is illegality.

Let me start with the issue of illegality complained of, by the applicant. It was submitted by counsel for the applicant that applicant was not heard in the disciplinary hearing. In my view, that was taken care in the impugned ruling of this Court because that was an issue relating to procedural fairness of termination that was dealt at CMA where applicant was heard. Applicant is not complaining that he was

denied right to be heard at CMA, rather, that he was not afforded that right in the Disciplinary hearing Committee. It is my view, as pointed out, illegality could have existed if applicant could have been complaining against denial of that right both before the CMA and the High Court. But that is not the case at hand. From where I am standing, I have failed to find any illegality based on the alleged denial of right to be heard in the impugned ruling. Whatever the case, the alleged illegality is not apparent on the face of the record for it to be a good ground for extension of time. It has been held several times that for illegality to be a ground, it must be apparent on the face of the record. This position was held by the Court of Appeal in the case of ***Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christians Association of Tanzania***, Civil Application. No. 02 of 2010 CAT (unreported). As to what amounts to an apparent error on the face of the record, was defined by the Court of Appeal in the case of ***Chandrakant Joshubhai Patel v. Republic*** [2004] TLR 218 that: -

"An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions..."

I, therefore, dismiss the ground of illegality.

It was submitted by counsel for the applicant that there is technical delay because the appeal was struck out by the court of Appeal. Counsel for the applicant argued that there was amendment to the Appellate Jurisdiction Act that was effected after he has filed his appeal before the Court of Appeal and that the said amendment introduced the requirement of leave. With due respect to counsel for the applicant, the submission that the law was revised on 31st July 2019 to introduce requirement of leave is not correct and is a misleading. I am of that view because section 5 of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] was amended for the last time in 2016 by Act No. 3 of 2016. Other amendments that have been done to that section were done in 2002 by Act No.25 of 2002 and in 1999 by Act No. 10 of 1999. Therefore, the submissions that the law was revised on 31st July 2019 introducing a requirement of leave is not valid. Be as it may, the law was revised in 2019 and was not amended. That being the case, nothing new was introduced in the said law at the time it was revised, rather, various amendments that were scattered in various Acts were incorporated in one statute. This is not the same as saying it was amended to introduce the requirement of leave. The argument that the law was amended by introducing the requirement of leave lacks merit and it fails.

It was submitted by counsel for the respondent that counsel for the applicant was negligent. I agree with those submissions. Reasons for this conclusion is not far. From the order of the Court of Appeal quoted hereinabove, it is undisputed that, applicant did not attach the record of CMA where the appeal emanated. It is a requirement of the law that the record should be attached, but it was not. This made his appeal to be incompetent. In my view, applicant has filed this application to circumvent that procedure, which is why, he has avoided to mention that apart from absence of leave, the application was struck out for failure to attach the record. In my view, this was a gross negligence on part of counsel for the applicant that cannot be a ground for extension of time. see ***Calico Textile Industries Ltd Vs Pyarali Esmail Premji*** (1983) TLR 28, ***Umoja Garage Vs National Bank of Commerce*** (1997) TLR 109, ***Abdallah S. Ndope & Others v. National Housing Corporation***, Civil Application No. 82 of 2011, CAT (unreported) to mention but a few. It is my view that, applicant is trying to use the back door to access the Court of Appeal. I have also noted that in the Notice of Application, applicant is only seeking extension of time and there is no indication that he is also applying for leave. It can be recalled that applicant's appeal was struck out for absence of leave but in the notice

of application, applicant has not prayed for leave to appeal before the Court of Appeal.

For the foregoing and in the upshot, I hereby dismiss this application for want of merit.

Dated at Dar es Salaam this 15th August 2022.


B. E. K. Mganga
JUDGE

Ruling delivered on this 15th August 2022 in chambers in the presence of Mr. Daniel Ngudungi, Advocate for the applicant and Mkumbo Elias, State Attorney for the respondent.


B. E. K. Mganga
JUDGE

