

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 257 OF 2023

(Arising from the Ruling issued on 11/07/2023 by Hon. Mbeyale, R, Arbitrator, in Labour Dispute No. CMA/DSM/UBG/62/2020 at Ubungo)

AMINA CHECHELE APPLICANT

VERSUS

ROMBO GREEN VIEW HOTEL RESPONDENT

RULING

*Date of Last Order: 02/10/2023
Date of Ruling: 19/10/2023*

B.E.K. Mganga, J.

Amina Chechele, the herein applicant, was employed by Rombo Green View Hotel, the herein respondent. On 04th May 2020 respondent terminated employment contract of the applicant. Applicant was aggrieved with termination of her employment as a result, she filed Labour complaint No. CMA/DSM/UBG/62/2020 before the Commission for Mediation and Arbitration henceforth CMA at Ubungo. Respondent

raised a preliminary objection that the dispute was time barred. On 11th July 2022, having heard respective submissions of the parties, Hon. Mbeyale, R, arbitrator, delivered a ruling dismissing the dispute for being time barred.

Dissatisfied with the said ruling, on 22nd August, 2023, applicant filed online revision application but the same was rejected by the Honourable Deputy Registrar on ground that applicant did not cite the provisions of the Employment and Labour Relations Act [Cap. 366 R.E. 2019]. It is undisputed by the parties that on 22nd August 2023, was the 42 day within which applicant was supposed to file her revision application. Since the revision she filed, applicant became out of time hence this application for extension of time. In her affidavit in support of the application, applicant deponed that after the said application for revision was rejected, she spent ten (10) days from 23rd August 2023 to 04th September 2023 to prepare this application.

Respondent filed both the Notice of Opposition and the counter affidavit of Alexander Leiya Kimario to oppose this application.

At the time of hearing this application, applicant was represented by Joseph Basheka, Personal Representative while the respondent was represented by Benitho Mandele, Advocate.

Arguing in support of the application, Mr. Basheka submitted that the delay was occasioned by the Deputy Registrar who, on 23rd August 2023, rejected the application that was filed by the applicant within time on 22nd August 2023 that was the last day. Mr. Basheka submitted further that in rejecting the application for revision, the Deputy Registrar indicated that the application was filed under wrong provisions. Mr. Basheka submitted that applicant filed this application through electronic filing system on 05th September 2023. He went on that applicant filed this application while out of time for 13 days.

Mr. Basheka also submitted that the Registrar had no jurisdiction to reject the said revision because it was properly filed. He cited the case of ***Bernard Paul Makunja v. Lilian Kibo High School***, Revision No. 345 of 2018, HC (unreported) to support his submissions that it is not necessary to cite Cap. 366 R.E. 2019 (supra) when challenging CMA ruling. He further cited the case of ***Indo-African Estate Ltd v. District Commissioner for Lindi District & 3 Others***, Civil Application No. 12/07 of 2022, CAT (unreported) to support his submissions that applicant cannot be denied right of appeal due to mistakes committed by officers of the court. He submitted further that 13 days are not inordinate and cited the case of ***Emmanuel Rurihafi & Another v. Janas Mrema***, Civil Appeal No. 314 of 2019,

CAT (unreported) to support his submissions that in the said case the Court of Appeal found that 30 days are not inordinate delay. He therefore pressed the court to grant the application.

In resisting the application, Mr. Mandele, learned counsel for the respondent submitted that, applicant has not accounted for the delay of 13 days of delay. Counsel for the respondent submitted further that, a delay even of a single day must be accounted for and cited the case of ***Mohamed Suleiman Ghona v. Mahmoud Mwemus Chotikungu***, Civil Application No. 179/01 of 2020, CAT (unreported), ***Tanzania Rent a Car v. Peter Kimuhu***, Civil Application No. 226/01 of 2017, CAT (unreported) and ***Muse Zongori Kisere v. Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019, CAT (unreported) to support his submissions. Mr. Mandele argued that, the document was already prepared hence there was no preparation of a new document. He added that, applicant was not supposed to prepare the application and pocket it without filing. He submitted further that, applicant was supposed, under Regulation 22 of the Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 48 of 2018, to go and seek clarifications from the Deputy Registrar on the next day as to what happened. In his submissions, counsel for the respondent conceded that the Deputy Registrar erred to reject the application and caused the

delay. He however maintained that there is no justification for the Court to grant the application and prayed the application be dismissed.

In rejoinder, the personal representative of the applicant submitted that applicant has accounted for the delay.

This being an application for extension of time, the court is being asked to exercise its discretion. But that discretion must be exercised judiciously. See the case of [Mza RTC Trading Company Limited vs Export Trading Company Limited](#), Civil Application No.12 of 2015 [2016] TZCA 12. In addition to that, applicant must show that there was good cause for the delay, must account for the delay and the delay should be not inordinate as it was held in the case of [Wambura N.J. Waryuba vs The Secretary Ministry of Finance & Another](#) (Civil Application 320 of 2020) [2021] TZCA 457, [Lyamuya Construction Co. Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania](#), Civil Application No. 2 of 2010 [2011] TZCA 4 and [Power & Network Backup Ltd vs Olafsson Sequeira](#) (Civil Application No. 307 of 2021) [2023] TZCA 80 to mention just a few.

In the application at hand, it is undisputed by the parties that applicant filed her revision application within time but the same was rejected by the Honourable Deputy Registrar. Whether the Deputy

Registrar was right or not to reject the said application cannot be a matter of consideration at this juncture because that may be decided at right time and not in the application at hand. Therefore, the delay is technical and not actual. Technical delay is a good ground for extension of time as it was held in the case of ***William Shija v. Fortunatus Masha*** [1997] TLR 213 and ***Emmanuel Rurihafi & Another vs Janas Mrema*** (Civil Appeal 314 of 2019) [2021] TZCA 332. In fact, in ***Rurihafi's case*** (supra) the Court of Appeal held *inter-alia* that: -

"In the circumstance, we have no hesitation to hold that, as the incompetent appeal was filed within time and the appellants were, as a result of their default to attach a copy of the ruling, penalized by having their appeal struck out, the prosecution of the incompetent appeal constituted sufficient cause for extension of time."

In the application at hand, applicant filed revision application within time but the same was rejected for failure to cite the provisions of the Employment and Labour Relations Act [Cap. 366 R.E. 2019].

It was submitted by counsel for the respondent that applicant did not account for the delay. With due respect, I have read the affidavit in support of the application and find that applicant accounted for 13 days she delayed after her revision was rejected. The delay of 13 days is not inordinate. In fact, in ***Rurihafi's case*** (supra) the Court of Appeal found

the delay of 22 days to be not inordinate. As pointed out hereinabove, applicant delayed for 13 days only.

For all what I have discussed hereinabove, I find that applicant has adduced sufficient reason to warrant extension of time hence the application is merited. I therefore allow this application and grant applicant fourteen (14) days within which to file the intended revision.

Dated at Dar es salaam this 19th October 2023



B. E. K. Mganga

JUDGE

Ruling delivered on 19th October 2023 in chambers in the presence of Joseph Basheka, Personal Representative of the Applicant and Ms. Rose Sanga and Wini Mandele, Advocates for the Respondent.



B. E. K. Mganga

JUDGE