

IN THE HIGH COURT OF TANZANIA

**LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS APPLICATION NO. 27831 OF 2023

ABDUEL EMMANUEL APPLICANT

VERSUS

MEDICINS SANS FRONTIERS RESPONDENT

RULING

*Date of last Order: 15/2/2024
Date of Ruling: 19/2/2024*

B. E.K. Mganga, J.

Applicant filed this application seeking extension of time within which to file revision against the Ruling issued on 26th July 2023 by Hon. Kalinga, C, arbitrator, in Labour dispute No. CMA/DSM/KIN/466/2023 that was filed by the applicant before the Commission for Mediation and Arbitration(CMA).

In support of the application, applicant filed his affidavit wherein he stated *inter-alia that*, on 30th April 2021, he entered employment contract with the respondent as Mission Pharmacy Manager. That, on 10th March 2023, respondent served him with the notice of intended retrenchment. That, respondent forced him to accept retrenchment package, but he refused. That, after refusal to accept retrenchment

package, respondent filed the dispute before CMA praying CMA to order applicant to accept retrenchment package. That, while the complaint that was filed by the respondent was pending at CMA, on 13th July 2023, respondent terminated his employment. That, he was aggrieved with termination of his employment as a result, he filed Labour dispute No. CMA/DSM/KIN/466/2023 complaining that termination was unfair for want of reason and procedure. Applicant deponed further that, after being served with the CMA F1 relating to dispute No. CMA/DSM/KIN/466/2023, respondent raised a preliminary objection that the complaint by the respondent was *res judicata*. He also deponed that, the arbitrator overruled the said preliminary objection but proceeded to struck out the dispute that he filed. Applicant further deponed that, while well within time, he filed Revision application before this court but when it was called on for hearing, respondent raised a concern that the affidavit was not properly verified, as a result, he withdrew it. That, the since time within which to file revision has elapsed, he filed this application for extension of time. It was further deponed by the Applicant that, there is illegality on the impugned ruling because the arbitrator overruled the preliminary objection raised by the respondent but proceeded to strike out the complaint he filed.

On the other hand, respondent filed both the Notice of Opposition and the Counter affidavit sworn by Oliver Mkanzabi, her advocate. In the said counter affidavit, Oliver Mkanzabi deponed *inter-alia* that, respondent raised a preliminary objection that Labour dispute No. CMA/DSM/KIN/466/2023 was *res judicata* to Labour dispute No. CMA/DSM/KIN/242/2023 and that, the dispute filed by the applicant was frivolous. She also deponed that the said preliminary objections were argued and that, the arbitrator overruled the said preliminary objections and struck out the entire Labour dispute No. CMA/DSM/KIN/466/2023 filed by the applicant for lack of facts to be adjudicated on. She further stated that, Labour Revision No. 26587 of 2023 that was filed by the applicant was tainted with irregularities which is why, applicant chose to withdraw it. She further deponed that, the decision of the arbitrator was fair and just because the relief sought are frivolous, baseless, and vexatious.

When the application was called on for hearing, Mr. Victor Kikwasi, Advocate, appeared and argued for and on behalf of the applicant, while Ms. Oliver Mkanzabi, advocate, appeared and argued for and on behalf of the respondent.

Arguing the application in support of the application, Mr. Kikwasi, learned advocate for the applicant submitted that, there is illegality on the impugned ruling. He argued that, the arbitrator determined the preliminary objection raised by the respondent, overruled it, but without justifiable reason and without affording parties right to be heard, proceeded to strike out Labour Dispute No. CMA/DSM/KIN/466/2023 that was filed by the applicant challenging termination of his employment. He submitted further that, the arbitrator struck out the said dispute due to, allegedly, lack of facts to be judged or ruled out.

Counsel for the applicant submitted that, applicant has accounted for the delay. He added that, the period within which to file revision ended on 12th December 2023, but, by that time, applicant had already filed Revision No. 26587/2023 before this court. He clarified that, applicant filed the said revision on 06th December 2023 but the same was withdrawn on 14th December 2023 on technical grounds. He went on that, on the same date i.e. 14th December 2023, applicant filed this application. He concluded his submissions praying that this application be granted.

Opposing the application, Ms. Mkanzabi, learned counsel for the respondent, submitted that, Rule 56 of the Labour Court Rules, GN. No.

106 of 2007 requires a person seeking extension of time to advance good cause. To bolster her submissions that applicant was supposed to advance good cause for the delay, counsel for the respondent cited the case of ***The Attorney General v. Tanzania Ports Authority & Another***, Civil Application No. 87 of 2016, CAT (unreported). Counsel for the respondent argued that, failure by the applicant to verify verification clause cannot be a good reason for extension of time. In her submissions, learned counsel for the respondent conceded that, initially applicant filed revision within time, but the same was withdrawn following the preliminary objection raised by the respondent. She therefore conceded that, the delay is technical. She was quick to submit that counsel for the applicant was negligent because he was supposed to make sure that verification clause is properly verified.

Learned counsel for the respondent argued that applicant has not accounted for each day of the delay. She strongly submitted that applicant was supposed to account for each day of delay. To cement on her submissions, she cited the case of ***Ntalula Tungu Ntalula v. Tanzania National Roads Agency***, Labour Revision No. 10 of 2020 HC (unreported).

On illegality, learned counsel for the respondent submitted that, there is no illegality because parties were afforded right to be heard. She therefore prayed the application be dismissed.

In rejoinder, Mr. Kikwasi, learned counsel for the applicant submitted that, applicant has accounted for the delay and has adduced reasons for the delay. He further argued that, ***Ntalula's case*** (supra) cited by the respondent is in favour of the applicant. He added that, in paragraph 16 of the counter affidavit, respondent noted that arbitrator overruled the preliminary objection. He concluded that applicant filed this application promptly.

This being an application for extension of time, I am called by the parties to exercise my discretion. I am cautious as it has been held several times by this court and the Court of Appeal that, discretion must be used judiciously. See the case of ***Mza RTC Trading Company Limited vs Export Trading Company Limited***, Civil Application No.12 of 2015 [2016] TZCA 12. Again, in order the court to exercise its discretion, applicant(s) must provide sufficient reason for the delay or provide relevant materials and circumstances justifying the grant of the application. See the case of ***Victoria Real Estate Development Ltd vs Tanzania Investment Bank & Others*** (Civil Application 225 of

2014) [2015] TZCA 354, [**Rose Irene Mbwete vs Phoebe Martin Kyomo**](#) (Civil Application 70 of 2019) [2023] TZCA 111, and [**Omary Shaban Nyambu vs Dodoma Water & Sewarage Authority**](#) (Civil Application 146 of 2016) [2016] TZCA 892, to mention but a few.

In the application at hand, it is undisputed by the parties that initially, while within time, applicant filed Revision Application No. 26587 of 2023. It is undisputed by the parties that the said revision was withdrawn following the preliminary objection that was raised by the respondent on ground that the verification clause was defective. From the foregoing, there is no doubt that, the delay is technical and not actual. There is a litany of case laws that technical delay is a good ground for extension of time. See 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."

It is my view that, the application is merited because applicant advanced the reason for the delay that is technical and not actual. In fact, applicant filed this application promptly.

It was submitted by counsel for the applicant that there is illegality on the impugned CMA Ruling. I agree with him because, the arbitrator overruled the preliminary objection that was raised by the respondent but proceeded to struck out the dispute that was filed by the applicant. From what was deponed by the parties, respondent filed Labour dispute No. CMA/DSM/KIN/242/2023 praying CMA to order applicant to accept retrenchment package but before even an order was issued, respondent terminated employment of the applicant. It was termination of his employment that forced applicant to file Labour dispute No. CMA/DSM/KIN/466/2023 challenging fairness of termination of his employment. It is my view that, circumstances of this application warrant it to be granted so that, the court can, on revision, decide whether, it was proper for the arbitrator to overrule the preliminary objection that was raised by the respondent that Labour dispute No. CMA/DSM/KIN/466/2023 was *res judicata* to Labour dispute No. CMA/DSM/KIN/242/2023 that was pending, and thereafter proceed to struck out Labour dispute No. CMA/DSM/KIN/466/2023 that was filed

by the applicant challenging fairness of termination of his employment. In my view, the complained of illegality is apparent on the face of record. The said illegality is a sufficient ground also for this application to be granted.

For the foregoing and in the upshot, I allow this application and grant applicant seven (7) days within which to file the intended revision application. For avoidance of doubt, applicant shall file the intended revision on or before 26th February 2024.

Dated at Dar es Salaam on this 19th February 2024.



B. E. K. Mganga
JUDGE

Ruling delivered on 19th February 2024 in chambers in the presence of Chali Juma, Advocate for the Applicant and Geoffrey Paul, Advocate for the respondent.



B. E. K. Mganga
JUDGE

