

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB-REGISTRY

AT BUKOBA

MISCELLANEOUS LABOUR APPLICATION NO. 3877 OF 2024

(Arising from Labour Dispute Number CMA/KAG/BUK/8/2023/13/2023 of the Commission for Mediation and Arbitration at Bukoba)

COSTANTINE GEDALIA..... APPLICANT

VERSUS

KAGERA SUGAR LIMITED..... RESPONDENT

RULING

17th and 19th April, 2024

BANZI, J.:

This ruling is in respect of an application for extension of time to file a labour revision against the award of the Commission for Mediation and Arbitration at Bukoba (CMA) delivered on 10th May, 2023. The application is made by way of notice of application, chamber summons and it is supported by an affidavit of the applicant. The respondent opposed the application through the counter affidavit of Mr. Richard Vicent Mzule, learned Advocate.

Briefly, the factual background leading to the matter at hand runs as follows. On 17th January, 2023, the applicant filed the labour dispute before the CMA against his employer, the respondent after his employment being terminated on 30th December, 2022. Upon receiving the evidence from both

sides, the learned Arbitrator dismissed the dispute for want of merit. Dissatisfied with the award, the applicant timely filed application for revision number 6 of 2023 before this Court. However, on 12th February, 2024, the said application was struck out for being incompetent. He has now returned before this Court seeking extension of time so that he can file the revision.

When the application was called for hearing, Mr. Projestus Mulokozi, learned counsel appeared for the applicant while Mr. Moses Kaluwa, learned counsel represented the respondent. The application was argued orally.

Mr. Mulokozi began his submission by adopting the notice of application, chamber summons and affidavit of the applicant to form part of his submission. He further submitted that, the reasons for the delay are found in paragraph 5, 6 and 7 of the applicant's affidavit. According to him, the applicant was diligent in filing Labour Revision No. 6 of 2023 under honest belief that, rule 24 of the Labour Court Rules, 2007 does not require application of that nature to be accompanied with chamber summons in addition to the notice of application. In that view, the applicant has accounted for each day of the delay whereby, from 10/05/2023 to 12/02/2024, he was before this Court pursuing Revision No. 6 of 2023 which is considered as technical delay. From 12/02/2024 to 20/02/2024, he was

following up the typed ruling of Labour Revision No. 6 of 2023 and on 21/02/2024, he filed this application. Thus, it took him 8 days from the moment the application was struck out to the time he filed this application, which was not inordinate delay. He further contented that, the award in question has material irregularity because the Arbitrator failed to consider section 37(5) of the Employment and Labour Relations Act [Cap.336 R.E. 2019] (the ELRA) which prohibits the employer to take disciplinary action in form of penalty, termination or dismissal against the employee who has been charged with a criminal offence which is substantially the same until final determination by the court and any appeal thereto. He therefore prayed for the application to be granted as the applicant has established good cause.

In reply, Mr. Kaluwa also adopted the counter affidavit and notice of opposition to form part of his submission. Furthermore, he submitted that, the issue of material irregularity in the award is misplaced because, it touches substantive revision and any decision concerning this ground at this stage, will pre-empt the intended revision. Also, the technical delay explained by the applicant exhibited negligence and ignorance of the law which falls short of the reason for the delay. According to him, from 10/05/2023 to 12/02/2024, there was nothing before this Court because

what was struck out was caused by negligence and ignorance. He added that, the applicant has failed to account for each day of the delay because it took him nine months to file this application contrary to the dictates of section 91(1)(a) of the ELRA which requires the revision to be filed within 45 days. He further contended that, the explanation by the applicant that from 12/02/2024 to 20/02/2024, he was following up the typed ruling is an afterthought because he did not attach any document to prove that, he applied for the ruling in question and was following up for the same. Also, he did not explain if it is the requirement of the law for application of this nature to be accompanied by copy of ruling. He supported his arguments by citing the cases of **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** [2011] TZCA 4 TanzLII, **Exim Bank Tanzania Ltd vs Jacqueline A. Kweka** [2021] TZCA 67 TanzLII, **Jubilee Insurance Company (T) Ltd vs Mohamed Sameer Khan** [2022] TZCA 623 TanzLII and **James Petro Ndaki vs Nyamalwa Wangaluke** [2024] TZCA 127 TanzLII. In that regard, he prayed for the application to be dismissed.

In his rejoinder, Mr. Mulokozi insisted that, the issue of illegality must be raised in the application for extension of time and the same must be

apparent on the face of record as stated in the cited case of **Exim Bank (Tanzania) Limited vs Jacqueline A. Kweka** (*supra*). He maintained that; the applicant has accounted for each day of the delay. Likewise, the argument that, there was nothing before this court from May 2023 to February, 2024 is unfounded because there is copy of ruling establishing existence of revision before this Court. He added that, they were neither negligent nor ignorant because they followed the law rather than practice. Also, according to him, their ground of technical delay would have collapsed in the absence of the copy of ruling to justify the days the applicant was pursuing his matter in court. He distinguished the cited case of **Petro Ndaki vs Nyamalwa Wangaluke** by claiming that, the case in question dealt with rule 45A of the Court of Appeal Rules which mandates parties to take action in writing but that rule is not applicable in High Court. Therefore, he reiterated his prayer for the application to be granted.

Having carefully examined the affidavits and the rival arguments of learned counsel for both sides, the main issue for determination is *whether the applicant has established good cause to warrant this court to grant extension of time.*

It is worthwhile to underscore that, according to rule 56(1) of the Labour Court Rules, this Court is vested with discretion to extend the period of limitation for the institution of revision where it has been sufficiently established that, the delay was with good cause. However, what amount to good or sufficient cause has not been defined by statutes but there are plenty of legal authorities which underline factors to be taken into account including the length of delay; the reasons for the delay; the degree of prejudice that the respondent may suffer if the application is granted; whether or not the application has been brought promptly; lack of diligence on the part of the applicant; the applicant must account for all the period of delay; delay should not be inordinate, just to mention a few. See the cases of **Tanzania Revenue Authority vs Tango Transport Co. Ltd**, Consolidated Civil Applications No. 4 of 2009 and 8 of 2008 CAT (unreported), **The Registered Trustees of Kanisa la Pentekoste Mbeya vs Lamson Sikazwe and Others** [2019] TZCA 516 TanzLII, **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** (*supra*), **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another** [2004] TZCA 45 TanzLII and **Omary Shabani Nyambu vs Dodoma Water and Sewerage Authority** [2016] TZCA 2024 TanzLII.

Moreover, there is another factor that is called technical delay *i.e.*, the time lost by party when he was pursuing matters in court. This factor was also developed by case law from **Fortunatus Masha vs William Shija and Another** [1997] TLR 154 by a single Justice of the Court of Appeal and later approved with authority by three Justices of the Court of Appeal in the case of **Salvand K.A. Rwegasira vs China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006 (unreported). The same factor was also discussed in the cases of **Bank M (Tanzania) Limited vs Enock Mwakyusa** [2018] TZCA 291 TanzLII, **Victor Rweyemamu Binamungu vs Geoffrey Kabaka and Another** [2020] TZCA 290 TanzLII, and **Emmanuel Makamba vs Bodi ya Wadhamini Jimbo Kuu la Mwanza** [2022] TZCA 809 TanzLII.

Reverting to the matter at hand, looking closely at the affidavit of the applicant with its annexures, it is apparent that, after the delivery of the award of the CMA on 10th May, 2023, the applicant timely filed application for revision number 6 of 2023 before this Court. However, on 12th February, 2024, the said application was struck out for being incompetent. As correctly submitted by Mr. Mulokozi, the applicant has lost time in pursuit of his revision before this Court. The period of delay up to 12th February, 2024

when the ruling of striking out Revision No. 6 of 2023 was pronounced is a technical delay which is explainable and excusable. That is to say, the applicant is excused from accounting for each day of the delay within the period when he was before this court in pursuit of Revision No. 6 of 2023.

In the case of **Fortunatus Masha vs William Shija and Another** (*supra*) it was stated that:

"...a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalised by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal." (Emphasis supplied).

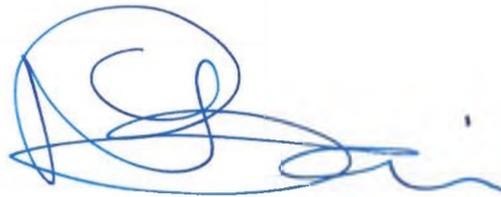
In his submission, Mr. Kaluwa was adamant that, the applicant exhibited negligence by filing the incompetent revision and thus, he should be penalised with this application. However, with due respect, his argument is misplaced because, basing on the authority above, the negligence if any cannot be used yet again to penalise the applicant in applying for extension of time in a bid to file a fresh revision. Concerning the period which constitutes actual delay, the applicant has explained that, he was following up the copy of the ruling. Although it is not the requirement of the law for application of this nature to be accompanied by copy of ruling, as rightly submitted by Mr. Mulokozi, it was necessary for the applicant to have the copy of ruling in order to justify the technical delay.

Apart from that, the applicant not only accounted for actual delay of eight days but also, he exhibited promptness after the pronouncement of the ruling of this Court striking out the first revision by filing this application eight days later which is not inordinate. All these establish good cause for the delay. In that regard, the cited cases of **Exim Bank (Tanzania) Limited vs Jacqueline A. Kweka** and **Petro Ndaki vs Nyamalwa Wangaluke** concerning negligence and requirement of rule 45A of the Court of Appeal Rules respectively, are distinguishable. Therefore, it is the finding

of this Court that, the applicant has managed to establish good cause to warrant this Court to grant extension of time.

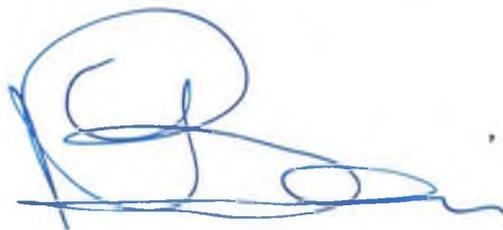
That being said, I grant the application by giving applicant thirty (30) days from the date of this ruling to file the Revision. Owing to the nature of this matter, I make no order as to costs.

It is accordingly ordered.



I. K. BANZI
JUDGE
19/04/2024

Delivered this 19th day of April, 2024 in the presence of the applicant in person, Ms. Dorothea Kasaizi, learned counsel holding brief of Mr. Moses Kaluwa, learned counsel for the respondent, Mr. A.V. Kaizilege, Judge's Law Assistant and Ms. Mwashabani Bundala, B/C. Right of appeal duly explained.



I. K. BANZI
JUDGE
19/04/2024