

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

MISCELLANEOUS LABOUR APPLICATION NO. 186 OF 2022

PATRICK MAGOLOGOZI MONGELLA APPLICANT

VERSUS

THE BOARD OF TRUSTEES OF THE PUBLIC

SERVICE SOCIAL SECURITY FUND 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

S. M. MAGHIMBI, J.

The dispute which is a subject of this application dates back to the 26th day of August, 2013 when the applicant herein lodged a dispute at the Commission for Mediation and Arbitration ("CMA"). On the 31st March, 2015 the CMA issued its award in favour of the 1st respondent herein who was the applicant's employer. Dissatisfied by the award, the applicant lodged an application for Revision before this Court which was registered as Revision No. 90/2016. On the 17th July, 2017 the court issued its judgment which was delivered on 04th August, 2017; dismissing the Revision application. Resenting the outcome of this court, the applicant moved the Court of Appeal under the provisions of Section 4(3) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019 and Rule 65 of

the Tanzania Court of Appeal Rules, 2009; to revise the decision of this court, setting aside it aside and declare the termination of the applicant to be unfair. On the 22nd day of April, 2022, the Court of Appeal ruled that the application before the Court was misconceived and consequently struck out the application. Still eager to pursue his right, the applicant has lodged this application under the provisions of Rules 24(1), 24(2)(a), (b), (c), (d), (e), (f), 24(3)(a), (b), (c), (d) and Rule 56(1), (2), (3) of the Labour Court Rules G.N No. 106 of 2007 ("the Rules") Section 57 of The Labour Institutions Act, Cap 300 R.E 2019 ("LIA") and section 11(1) of the Appellate Jurisdiction Act, Cap 141 RE 2019 ("AJA"). He is seeking for the following orders:-

- i. That this Honourable court be pleased to extend time within which the applicant may lodge his notice of intention to appeal against the judgment and decree of this court in revision No. 90 of 2016 dated 17th July, 2017 and delivered on 04th August, 2017.
- ii. That the Honourable Court be pleased to make any such other orders as it may deem fit.

The application was disposed by way of written submissions. Before this court the applicant was represented by Mr. Frank Mwalongo and Juventus Katikiro, learned advocates whereas Mr. Steven Thomas

Biko, learned Principal State Attorney appeared for the respondents. I appreciate the comprehensive submissions of both parties which shall be taken on board in due course of constructing this ruling.

In this application I find the court is called upon to decide whether the applicant has adduced sufficient reason(s) for the grant of extension of time prayed. My only concern in this case will be to see how the applicant explained the reasons for the delay of lodging the notice of appeal from the 22nd day of April, 2022 when the Court of Appeal delivered the ruling and the 26th May, 2022 when this application was filed, I will then see whether the delay is inordinate and was contributed by negligence on the part of the applicant.

I have noted that in his submissions on the reasons for the delay, Mr. Katikiro took the Court back to the year 2017 when the judgment of this court was delivered. I see no need to go that far back because those facts are not disputed of the happening of those events as clearly narrated above in the beginning of this ruling. However, I have noted that in their submissions to oppose the application, the respondents have argued that the applicant has failed to account for the 250 days that had lapsed from the date of the judgment of this court to the date of filing the current application. As pointed out by Mr. Katiriko, Section

21(2) of The Law of Limitations Act, [Cap 89 RE 2019] sets a principle that:

in computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

I am aware that the Limitation Act is not applicable to the Court of Appeal, however, it is the principle that is set therein that I am going to adopt. The Section implies exclusion of the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief. The case at hand has the same background because up until the 22nd April, 2022 the applicant was prosecuting another civil proceeding at the Court of Appeal, hence that period is excluded from my analysis on whether sufficient reasons for the delay have been advanced. As I have pointed out, I don't think

what the applicant has been doing since 2017 should be an issue of concern at this point because it is well on records.

Having said that, I will now consider the submissions for the period of delay in the time frame I have mentioned, between the 22nd day of April, 2022 when the Court of Appeal delivered the ruling and the 26th May, 2022 when this application was filed. The remaining period is the period of one month and 4 days to the date of filing this application.

In para 14 of the affidavit in support of the application, the reasons for the delay were explained to be follow ups to obtain a copy of the ruling from the Court of Appeal and a further rejected application during online filing before this court. On the 17th May the application was rejected with an order that the parties file a Swahili version of the same and it is not until the 23rd May, 2022 that the applicant lodged the Swahili version.

On his part, arguing on this period, Mr. Biko submitted that after the struck out of the revision application at the Court of Appeal on 22/04/2022, the applicant filed the present application on 26/05/2022 which is 28 days after. That according to para 11 of the respondent's counter affidavit, the applicant lost 18 days from the he obtained a copy

of the ruling to the date of filing this application arguing that the delay has not been explained.

Having considered the parties submissions, I will make my determination in line with the cited case of **Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania** where it was held that there is no clear definition of what amounts to sufficient cause. However, the case laid down principles to be considered in the grant of an application for extension of time where it was held that:-

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however the following may be formulated:-

- i. The applicant must account for all the period of delay.*
- ii. The delay should not be inordinate.*
- iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*

iv. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.”

In the matter at hand, as narrated earlier immediately, after the impugned decision was delivered on 11/08/2017, the applicant lodged the notice of intention to appeal timely, the fact which is not disputed by the respondent. Thereafter the applicant decided to withdraw the notice of appeal and filed an application for revision at the court of appeal for clarification of matters of facts intended to be challenged in the impugned decision. As stated above the application was struck out by the court of appeal for being misconceived. Again, after the struck out of the revision application at the court of appeal on 22/04/2022 the applicant filed the present application on 26/05/2022. At para 14 of his affidavit, the applicant has even explained the 28 days of delay to have included a follow up of the copy of the decision and a rejected application in this court. Under such circumstances, it is to the satisfaction of this court that the applicant never slept on his right, neither was he negligent to pursue his right. He took actions immediately after the delivery of each decision and the delay in filing this application was due to the change in rules of filing matters in the

court whereby parties were required to file their pleadings in Swahili language. In the premises, it is to the satisfaction of this court that the applicant has met the principles established in the case of **Lyamuya Construction** (supra).

On those findings, this application is hereby granted. Time is extended for the applicant to lodge his notice of appeal which shall be filed in this court within thirty (30) days from the date of this ruling.

Dated at Dar es Salaam this 26th day of September, 2022.



A handwritten signature in black ink, appearing to read 'S.M. Maghimbi', is written over a horizontal dotted line.

**S.M. MAGHIMBI
JUDGE**