

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

**MISCELLANEOUS APPLICATION NO. 213 OF 2023**

*(Arising from the judgment and Decree of High Court Labour Division (Hon. Justice Wambura, J) dated  
4<sup>th</sup> June 2020 in Revision No. 813 of 2018 at Dar es Salaam).*

**ROBERT MAPESEI ..... APPLICANT**

**VERSUS**

**TANZANIA REVENUE AUTHORITY ..... RESPONDENT**

**RULING**

*Date of last Order: 28/08/2023  
Date of Ruling: 27/09/2023*

**B. E. K. Mganga, J.**

On 23<sup>rd</sup> July 2023, Robert Mapesi, the above-named applicant filed this application seeking the court to extend time within which to file a notice of appeal against the judgment and decree of this court (Hon. S.A.N. Wambura, J) dated 04<sup>th</sup> June 2020.

When the application was called on for hearing, Mr. Makaki Masatu, Advocate for the applicant appeared and argued for the applicant that, after delivery of the said judgment and being aggrieved, 03<sup>rd</sup> August 2020 applicant filed Civil Application No. 310/18 of 2020 before the Court of

Appeal for revision. Counsel for the applicant submitted further that, on 04<sup>th</sup> July 2023, the Court of Appeal struck out the said revision on ground that applicant ought to have filed an appeal and not revision. He went on that, on 14<sup>th</sup> July 2023 applicant was served with the Court of Appeal order and that on 18<sup>th</sup> July 2023, four days after being served with the Court of Appeal order, applicant filed this application in the e-filing system. Mr. Masatu submitted further that; applicant has accounted the delay including the period from 04<sup>th</sup> July 2023 to the date of filing this application. During submissions, learned counsel for the applicant conceded that, applicant has not attached the printout to show that this application was filed electronically on 18<sup>th</sup> July 2023.

Counsel for the applicant submitted further that, in an application of this nature, applicant is required to account for the delay as it was held in the case of ***Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, CAT (unreported) and added that applicant has accounted for the delay. He submitted further that, section 21 of the Law of Limitation Act excludes time the party spent in Court and cited the case of ***Patrick Magologozi Mongella V. The Board of Trustees of the Public Service Social Security Fund***, Misc. Labour Application No. 186 of 2022, HC (unreported) to support his

submissions. Counsel for the applicant added that, applicant was diligent in prosecuting the matter before the Court of Appeal.

Counsel for the applicant also submitted that, applicant filed and withdraw the notice of appeal on ground that his grievance was on facts only. He argued that, applicant relied on the Court of Appeal's decision in the case of ***Muhimbili National Hospital v. Constantine Victor***, Civil Application No. 44 of 2013. He went on that, in the case of ***Patrick Magologozi Mongella v. The Board of Trustees of the Public Service Social Security Fund***, Civil Application No. 342 of 2022, CAT (unreported), the The Court of Appeal changed the earlier position set in ***Muhimbili National Hospital's case (supra)*** and now a person can appeal against both facts and law. Learned counsel for the applicant concluded his submissions praying the court to grant the application.

On the other hand, Jacqueline Chunga, Senior State Attorney resisted the application submitting that, on 4<sup>th</sup> June 2020 this court dismissed revision No. 813 of 2018 that was filed by the applicant. Senior State Attorney submitted further that, on 17<sup>th</sup> June 2020, applicant filed the notice of appeal but withdraw it on 23<sup>rd</sup> July 2020. She added that, on 03<sup>rd</sup> August 2020, applicant filed Revision application No. 310/18 Of 2020 before the Court of Appeal but the same was struck out on 04<sup>th</sup> July 2023.

Learned State Attorney submitted further that, applicant filed this application on 25<sup>th</sup> July 2023 after 3 years and one month from the date this court dismissed revision No. 813 of 2018. She submitted further that, applicant has filed this application in abuse of Court process because he filed a notice of appeal which he withdrew and thereafter filed Revision that was struck out by the Court of Appeal. To bolster her submissions that applicant has filed this application in abuse of court process, Senior State Attorney referred this Court to the case of ***Eredina William Swai v. Andrea Nehemia Swai & Another***, Probate Appeal No. 17 of 2019, HC (unreported). She however, during submissions, conceded that there is no paragraph in the counter affidavit showing that applicant filed this application in abuse of Court process.

Ms. Chunga submitted further that, applicant was supposed to account for each day of delay and cited the case of ***Finca (T) Limited & Another v. Boniface Mwalukisa***, Civil Application No. 589/12/ of 2018, CAT (unreported) to support her submissions. she added that, applicant has not accounted for the delay from 14<sup>th</sup> July 2023 to 18<sup>th</sup> July 2023. She submitted further that, both ***Constantine's case (supra)*** and ***Magologozi's case (supra)*** are not applicable in the application at hand because applicant was supposed to choose a proper route. She added that,

applicant was duly represented by an advocate and that, applicant's advocate was negligent. Senior State Attorney submitted further that, negligence of an Advocate is not a ground for extension of time and cited the case of **Salome Kahamba v. Siril Augustine Mallya**, Misc. Civil Application No. 557 of 2021, CAT (unreported) to support her submissions. During submissions, Senior State Attorney conceded that, in the counter affidavit, respondent did not state that applicant's counsel was negligence hence is submission from the bar that is not evidence.

In further imploring the court to dismiss this application, Senior State Attorney referred the court to the case of **Tanga Cement Co. Ltd v. Jumanne Masangwa & Another**, Civil Application No. 6 of 2001 CAT (unreported) that the court should consider whether, applicant acted promptly and whether, he gave explanation for the delay. Senior State Attorney was quick to submit that applicant did not act promptly.

Senior State Attorney added that, applicant was supposed to show that there is likelihood of success and cited the case of **Rajabu Kidimwa & Another V. Idd Adam** [1991] TLR 38 to support her submissions. Senior State Attorney concluded her submission praying the court to dismiss this application on ground that applicant has failed to adduce good reasons for the delay.

In rejoinder, Mr. Masatu, counsel for the applicant maintained that applicant has accounted for the delay and that, both ***Constantine's case (supra)*** and ***Magologazi's case (supra)*** are relevant to this application. He submitted further that, both **Salome's case** (supra) and **Tanga Cement's case** (supra) are not applicable to the application at hand because there are no facts showing that Advocate of the applicant was negligent or that applicant was not diligent. He added that, in the counter affidavit, respondent did not state that applicant filed this application in abuse of court process.

I should point out albeit briefly that, submissions by counsel for the applicant that applicant filed this application through electronic filing system on 18<sup>th</sup> July 2023 is not supported by evidence hence it is submissions from the bar that is not evidence hence cannot be acted upon. See the case of [Rosemary Stella Chambejairo vs David Kitundu Jairo](#), Civil Reference 6 of 2018) [2021] TZCA 442, [A. Nkini & Associates Limited vs National Housing Corporation](#), Civil Appeal No.72 of 2015) [2021] TZCA 564, and [Shadrack Balinago vs Fikir Mohamed @ Hamza & Others](#), Civil Application No. 25 of 2019 [2021] TZCA 45 to mention just a few. Again, submissions by the Senior State Attorney that applicant's counsel was negligent, and that applicant filed

this application in abuse of court process suffers the same consequence because it is not backed up by evidence on the record.

This being an application for extension of time, it is upon the applicant to show good cause for delay has it was held in the case of ***Attorney General v Oysterbay Villas Limited & Another***, Civil Application No. 299/16 of 2016, CAT at Dar es Salaam, ***Wambura N.J. Waryuba v. The Principal Secretary Ministry for Finance and Another***, Civil Application No. 320/01 of 2020. In ***Wambura's case*** (supra) it was held *inter-alia* that: -

*"... it is essential to reiterate here that the Court's power for extending time... is both wide-ranging and discretionary but it is exercisable judiciously upon cause being shown."*

In the application at hand, it is undisputed that on 17<sup>th</sup> June 2020 applicant filed the Notice of Appeal before this court with a view of challenging the judgment and decree of this court dated 4<sup>th</sup> June 2020. It is also undisputed that on 27<sup>th</sup> July 2020, he filed the notice to withdraw the said notice of appeal. It is also undisputed that, on 3<sup>rd</sup> August 2020, applicant filed an application for Revision No. 310/18 of 2020 before the Court of Appeal and that, on 4<sup>th</sup> July 2023, the said Revision was struck out on ground that applicant should have filed an appeal and not application for revision. There is no contention that all that time, applicant

was in the corridors of the Court of Appeal. That notwithstanding, it is my view that, applicant was indifference of the proper route to take which is why initially filed the notice and later, withdrew it and filed revision. In my view, indifference of the applicant on the proper route to take in approaching the court cannot be a ground for extension of time.

It was deponed by the applicant that she was supplied with a copy of Ruling of the Court of Appeal striking out Revision Application No. 310/18 of 2020 on 14<sup>th</sup> July 2023 and that, the days from 14<sup>th</sup> July 2023 to 18<sup>th</sup> July 2023, were spent in preparation and filing this application. In fact, there is no contention on that. The record shows that applicant filed this application on 25<sup>th</sup> July 2023. As pointed hereinabove, there is no proof that applicant filed this application electronically on 18<sup>th</sup> July 2023. In absence of that proof, I hold that applicant filed this application on 25<sup>th</sup> July 2023 and not on 18<sup>th</sup> July 2023.

In the affidavit in support of the application, applicant did not account for the delay of seven (7) days from 18<sup>th</sup> July 2023 when he was preparing this application to the date of filing this application on 25<sup>th</sup> July 2023. It was correctly in my view, submitted by both counsel that applicant was supposed to account for the delay as it was held case of [\*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 *Finca T. Limited & Another vs Boniface Mwalukisa* (Civil Application 589 of 2018) [2019] TZCA 561 cited by counsel for the applicant and the respondent respectively. There is a plethora of case laws that, the delay even of a single day, must be accounted for. See *Mwalukisa's case* (supra), *Hyansitha Malisa vs John Malisa* (Civil Application 167 of 2021) [2023] TZCA 239 and *Tanzania Local Government Workers Union (TALGWU) vs Sospeter Gallus Omollo* (Civil Application No.311/18 of 2022) [2023] TZCA 17486 to mention just a few.

As pointed hereinabove, applicant did not account for seven days from 18<sup>th</sup> July 2023 to 25<sup>th</sup> July 2023. With that failure, I find that there is no justification for this court to extend time.

For the foregoing and in the up short, I dismiss this application for want of merit.

Dated at Dar es salaam this 27<sup>th</sup> September 2023



B. E. K. Mganga  
**JUDGE**

Ruling delivered on 27<sup>th</sup> September 2023 in chambers in the presence of Ms. Elizabeth Kifai, Advocate for the Applicant but in the absence of the Respondent.



A handwritten signature in black ink, appearing to read 'B. E. K. Mganga'.

B. E. K. Mganga  
**JUDGE**

Labour Court-TZ.