

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 4571 OF 2024**

**ZENUFA LABORATORIES LTD..... APPLICANT**

**VERSUS**

**DANIEL MWANG'AMBA..... RESPONDENT**

**RULING**

*Date of Last Order: 08/05/2024*

*Date of Ruling: 17/05/2024*

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

Applicant has filed this application seeking extension of time within which to file Revision against CMA award issued by Hon. Lucia Chrisantus Chacha issued on 4<sup>th</sup> December 2023. In support of the application, applicant filed the affidavit sworn by Ceasor Sebastian Kabissa, advocate. In the said affidavit, it was deponed that applicant, on 15<sup>th</sup> January 2024 applicant filed mistakenly Miscellaneous Application No. 762 of 2024 instead of Revision application. It was further deponed that the said Miscellaneous application was registered as Rex Advocates as 1<sup>st</sup> applicant and Zenufa Laboratories as 2<sup>nd</sup> Applicant while Daniel Mwang'amba was registered as the respondent. It was also deponed that, the said application was assigned to Hon.

Mlyambina, J. That, on 4<sup>th</sup> March 2024 applicant prayed to withdraw the said Miscellaneous Application No. 762 of 2024 with intention of seeking a proper redress. That, on 5<sup>th</sup> March 2024 applicant was served with the copy of the order withdrawing the said application and on the same date she filed this application for extension of time.

Oposing the application, respondent filed the Notice of Opposition and the Counter affidavit. In his counter affidavit, respondent either noted or disputed the contents of the applicant's affidavit.

When the application was called on for hearing, Mr. Ceasor Kabissa, learned advocate entered appearance and argued on behalf of the applicant while Mr. Saulo Jackson Kusakalah, learned advocate entered appearance and argued on behalf of the respondent.

Arguing in support of the application, Mr. Kabissa submitted that, extension of time is discretion of the court upon the applicant satisfying the court that there were good reasons for the delay and cited the case **Lyamuya Construction Company Ltd v. Board of Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT(unreported) to support his submissions. Counsel for the applicant submitted that initially, while within time, by mistake, applicant filed Miscellaneous Application No. 762 of 2024 instead of Revision application and that the names of the parties were

wrongly recorded in the electronic filing system(eCMS). He further submitted that, on 4<sup>th</sup> March 2024 the said application was withdrawn, and that applicant was served with the court order on 5<sup>th</sup> March 2024 and filed this application on the same date.

Mr. Kabissa submitted that, applicant filed this application promptly after withdrawal of the application that was wrongly filed. He cited the case of ***Bulyanhulu Gold Mine v . George Allen Gwabo***, Civil Application No. 23 of 2015, CAT,(unreported) and ***Director Ruhonge Enterprises v. January Lichinga***, Civil Application No. 1 of 2006, CAT(Unreported) to support his submissions that in an application for extension of time, applicant must file the application promptly and that the delay must not be inordinate. He concluded that, applicant filed this application promptly and prayed that the application be granted.

Resisting the application, Mr. Saulo Jackson Kusakalah, learned advocate for the respondent submitted that, all what was deposed in the applicant's affidavit are not supported by any other evidence. He submitted further that, there is no proof that applicant filed Miscellaneous Application No. 762 of 2024 on 15<sup>th</sup> January 2024. He further submitted that, the delay is actual and not technical because there is no proof that applicant filed the said application. Learned counsel for the respondent went on that, the application that was

withdrawn is miscellaneous and not revision and that, applicant was supposed to show diligence from 4<sup>th</sup> December 2023 to the date of filing, but she did not. He added that, since parties in the said Miscellaneous application and the present application are different, applicant cannot bank on that application as a ground for extension of time. In his submissions learned counsel for the respondent conceded that, in the said Miscellaneous Application applicant indicated Daniel Mwang'amba as the respondent and that, there is no any application wherein Rex Attorneys and Zenufa Laboratories were applicants and Daniel Mwang'amba was the respondent.

Mr. Kusakalah submitted further that, applicant has not accounted for the delay from 4<sup>th</sup> December 2023 to 19<sup>th</sup> April 2024. In his submissions, counsel for the respondent conceded that applicant was supposed only to account the days she delayed.

In rejoinder submission, counsel for the respondent only reiterated his submissions in chief.

I have considered evidence of the parties both in the affidavit and the counter affidavit and find that, in the counter affidavit apart from disputing what was stated by the applicant's affidavit and putting her to strict proof thereof, respondent did not provide evidence to challenge what was stated by the applicant. I should point out that, submissions

that applicant did not account for the delay or that there is no good reason for the delay are not in the respondent's counter affidavit. Since both affidavit and counter affidavit are substitutes of oral evidence as it was held in the case of See ***Uganda v. Commissioner of Prison Exparte Matovu*** [1966] EA 514, ***Phantom Modern Transport (1985) Limited vs D.T. Dobie (Tanzania) Limited*** (Civil Reference 15 of 2002) [2002] TZCA 6 (10 December 2002), ***Bruno Wenceslaus Nyalifa vs Permanent Secretary Ministry of Home Affairs & Another*** (Civil Appeal 82 of 2017) [2018] TZCA 297 (13 December 2018), ***Rosemary Stella Chambejairo vs David Kitundu Jairo*** (Civil Reference 6 of 2018) [2021] TZCA 442 (2 September 2021) and ***Rustamali Shivji Karim Merani vs Kamal Bhushan Joshi*** (Civil Application 80 of 2009) [2012] TZCA 16 (27 February 2012) to mention but a few.

Since both affidavit and the counter affidavit are substitute of oral evidence, respondent was supposed to bring evidence in his counter affidavit and not merely to dispute what was stated by applicant or was not supposed to put applicant on strict proof. I Therefore hold that, respondent has not challenged what was stated by the applicant. In fact, during hearing, respondeent conceded presence of Misceallaneous application No. 762 of 2024. More so, there is no evidence by the

respondent showing that applicant filed the said Miscellaneous Application No. 762 of 2024 while out of time. I therefore agree with counsel for the applicant that the said application was filed within time and that there is technical delay.

I have held hereinabove that there is technical delay. It has been held several times both by this court and the Court of Appeal that technical delay is one of the grounds acceptable for the court to extend 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."*

In the case of ***Philemon Mang'ehe t/a Bukine Raders vs Gesso Herbon Bajuta*** (Misc. Civil Application No. 374/02 of 2022) [2023] TZCA 17672 (29 September 2023) it was held by the Court of Appeal that:-

*"For the avoidance of doubt, technical delay is applicable in a situation when the first appeal or application was timely filed but failed to proceed due to some other factors."*

It was correctly submitted by counsel for the applicant that applicant filed this application promptly. In fact, promptness in filing an application for extension of time is a sign that applicant is filing the application just to delay justice. In strength of the cases cited by counsel for the applicant, I find that this application has merit.

For the foregoing, I allow the application and grant applicant Seven (7) days leave from today within which to file the intended revision.

Dated at Dar es salaam this 17<sup>th</sup> May 2024



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

Ruling delivered on 17<sup>th</sup> May 2024 in chambers in the presence of Ceasor Kabissa, Advocate for the Applicant and Daniel Mwang'amba, the Respondent.



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