

TANZANIA / JUDGMENT

MISC

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1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE LABOUR COURT
DIVISION AT MTWARA SUB-REGISTRY MISC. LABOUR APPLICATION No. 8903 OF 2024
(Originating from the Decision and Award of the Commissioner for Mediation and Arbitration
Award of Mtwara in Labour Dispute No. CMA /MTW/11/2023 dated 17th November, 2023)
ABDALLAH YAH AYA MDIRA..... APPLICANT VERSUS DANGOTE
CEMENT LTD TANZANIA..... RESPONDENT

RULING

11th & 2nd June, 2024 MPAZE, J.: In this application, the applicant is seeking for an extension of time to lodge an application for revision out of time . The application which is preferred under Rule 24(1), (2) (a) (b) (c) (d) (e) and (f); 24(3) (a), v (b), v (c) and (d); 56(1) (2)(3); 55(1) and (2) of the Labour Court Rules GN No 106 of 2007 . The application is supported by the affidavit of the applicant, Abdallah Yahaya Mdira. i The application traces its origin to the decision of the CMA in Labour Dispute No. CMA/MTR/11/2023. In the said application, the respondent emerged victorious, a decision that did not please the applicant. As is customary, a party who is dissatisfied with the CMA's decision is required to challenge the decision by way of revision to this court within six weeks from the date of the decision. The applicant, in an attempt to contest the decision, approached this court and successfully registered a revision application, which was assigned No. 28209 of 2023. However, the application encountered difficulties when it was scheduled for hearing, as an objection was raised, claiming that the application was fatally defective. The objection was heard, and on 17th April, 2024 the ruling was given, declaring that the application was defective due to the incorrect case number cited for revision. In the said application, the applicant, in both his chamber summons and affidavit, referred the court to Labour Dispute No. CMA/MTW/52/2023, which was claimed to have never existed between the parties. This led to the revision application being struck out, resulting in the current application being filed. 2 During the hearing of this application the applicant appeared by way of personal representative of Mr. Michael Deograthias Mgombozi while the respondent enjoyed the legal service of Mr. Stephen Lekey, learned advocate. In supporting and opposing this appeal, both parties had a lot to submit. However, I will not detail all their submissions but will summarize a few key points. When necessary, especially while discussing whether the applicant has advanced sufficient or good reasons for this court to allow his application, I will refer to any points I have not summarized. After I heard the submissions from both parties, I discovered that parties do not

dispute that the revision application No. 28209, which was struck out, was filed to challenge Labour Dispute No. CMA/MTR/52/2023. Also, I noted that the applicant's main reason for seeking an extension of time to file revision out of time is based on a technical ground. He submitted that since there was an application he had previously filed which was dismissed, this dismissal should validate his ground of technical delay. He supported the case of *Fortunatus Masha*

- v. *William Shija & Another*, [1997] T.L.R 154 to back up his submission. 3 On his part, Mr. Lekey advocate for the respondent, strongly opposed this reason to be a ground for extension of time in this application. He argued that it would have been considered a technical delay if the applicant had filed the revision application for the correct Labour Dispute, which is Labour Dispute No. CMA/MTR/11/2023. He stated that since the application was not for this matter, the ground of technical delay regarding the extension of time for Labour Dispute No. CMA/MTR/11/2023 cannot stand. Mr. Lekey argued that the case of *Fortunatus Masha*, referred to by the applicant's representative, is distinguishable because the circumstances of this case differ from those in the *Fortunatus* case. He explained that the appeal which was struck out in *Fortunatus Masha*'s case was for the proper case, which was found to be incompetent. This differs from the present case, where the revision was struck out for a case that was not proper for which the revision was sought. He further stated that had the application for revision that was struck out been for the revision of Labour Dispute No. CMA/MTR/11/2023, then the ground of technical delay would have been justifiable. However, since this was not the case, Mr. Lekey emphasized that the technical delay in these circumstances cannot stand. 4 Mr. Lekey's view was that since Labour Dispute No. CMA/MTR/11/2023 has never been subjected to a revision application since the CMA's decision, the applicant was bound by the rule of explaining each day of delay, which the applicant has failed to do. Based on these submissions, counsel for the respondent prayed that this application be dismissed. In his rejoinder, the applicant maintained that the cause of the delay is due to a technical ground, arguing that the application which was struck out is connected with this one. He asked the court to consider this as a sufficient reason to grant the application. The applicant representative also asserted that given the circumstances of this case, where there is an issue of illegality, the rule of explaining each day of delay does not apply. Hence, he insisted that the court should allow his application. I am aware that an application for an extension of time is granted at the court's discretion, which must be exercised judiciously based on the circumstances of each case and upon the applicant showing good or sufficient cause. 5 What constitutes good or sufficient cause has been elaborated in numerous cases, such as *Par es Salaam City Council v. Jayantilal P. Rajani*, Civil Application No. 27 of 1987, *Tanga Cement Company Limited v. Jumanne D. Masanqwa and Another*, Civil Application No. 6 of 2001, *Eliya Anderson v. Republic*, Criminal Appeal No. 2 of 2013, and *Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 (all reported in *Tanzlii*) In the case of *Asha Juma Mansoor & 9 Others v. John Ashery Mbogomi*, Civil Application No. 192/03 of 2020, it was stated that: '... There are factors which the Court considers when determining this, as introduced by various decisions of this court these

factors though not exhaustive are such as; the length of the delay; the reasons for the delay; the degree of prejudice the respondent stands to suffer if time is extended; whether the applicant was diligent; and whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged.' [Emphasis added] 6 Similarly, in *Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd*, Civil Application No. 13 of 2010 (reported in *Tanzlii*), it was noted; 'What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion.' Having all these in mind, returning to the present case, it can be noted that the main ground raised by the applicant to persuade this court to grant his application centers on the issue of technical delay. It is a settled position of law that the period spent in court prosecuting cases amounts to technical delay, which is excusable. In the case referred to by the applicant's personal representative, the of *Fortunatus Masha v. William Shija & Another*, the Court of Appeal made the following observation; '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 7 incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized 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. In these circumstances an extension of time ought to be granted.' See also the cases; *Elly Peter Sanya v. Ester Nelson* ,(Civil Appeal No. 151 of 2018) [2020] TZCA 157 and *Bank M (Tanzania) Limited vs. Enock Mwakyusa* /Civil Application No. 520 of 2017)

[2018] TZCA 291. There is no dispute that the applicant filed an application for the revision of a Labour Dispute , and there is no dispute that in the chamber summons, which was supported by the applicant's affidavit, the dispute for which the applicant sought revision is not the same one for which he is now seeking an extension of time, as I previously explained. Due to this discrepancy, Mr. Lekey argues that the reason for delay in the current application cannot be considered as a technical delay. He contends that it would have only be a technical delay if the revision 8 application that was struck out had been for CMA/MTW/11/2023, emphasizing that this is what was stated in the case of *Fortunatus Masha*. I have no issue with Mr. Lekey's submission I partly agree that he is correct. However, I do not agree with his assertion that the applicant's claim does not amount to a technical delay for the following reasons; First, I have reviewed the application for revision No. 28209/2024 which was struck out on 17th April, 2023. It is true that it sought revision for Labour Dispute No. CMA/MTW/52/2023. However, besides having the chamber summons and affidavit, the decision sought for revision was attached to the application. By attaching the decision to the application, can be noted that the applicant's intention

was for the court to revise the decision attached, despite the chamber summons and affidavit citing a different dispute number. I would have a different view if I would have observed that the decision attached was the same as the one mentioned in the chamber summons; in that case, I would agree with Mr. Lekey's submission in its totality. Secondly, I have examined the affidavit sworn by the applicant in the said application for revision. It shows that the applicant was 9 complaining about the CMA's decision delivered on 17th November, 2023. The decision given on this date was the one annexed to the application for revision, while the decision for Labour Dispute No. CMA/MTR/52/2023 was actually dismissed on 9th March, 2023 for being overtaken by events. It is evident that despite the applicant's chamber summons and affidavit mentioning Labour Dispute No. CMA/MTW/52/2023 for revision, looking at what was attached and the date of the decision being challenged indicates the applicant's true intention. Thirdly, I found that the application for revision No. 28209/2024, which was struck out for being defective, could have been rejected by the admission officer upon realizing that the decision sought to be revised and the decision attached did not match. This rejection would have allowed the applicant to submit a new application afresh, as there was still time to do so. Considering all these points, I am of the settled mind that the circumstances in this case amount to a technical delay. I acknowledge that Mr. Lekey argued the applicant should account for each day of the delay. He suggested that if not from the date of the original decision, then at least the applicant should account for the five days from the date the revision application was struck out to the date this application was filed. io Indeed, it is true that the application for revision was struck out on 17th April, 2023 and this current application was filed on 23rd April, 2023 making it a period of 5 days since the decision was issued. Considering this time, despite the applicant did not provide evidence of when exactly received a copy of the ruling, I find that the 5-day delay is not inordinate under the circumstances of this case. I am satisfied that the applicant has adequately accounted for this period of delay. It is sufficient to note that the applicant has presented sufficient cause to justify granting the extension sought in this case. Therefore, I find the application meritorious. Accordingly, the application is allowed in its entirety. The applicant is directed to file the application for revision within 15 days from the date of this ruling. As this application relates to Labour Dispute no order as to costs is made. Order accordingly. Dated at Mtwara this 26th June 2024. ii Court: Ruling delivered in Mtwara on this 26th day of June 2024 in the presence of Mr. Abdallah Yahaya Mdira, the applicant and Ms. Jennifer Kivuyo, the Learned Advocate for the Respondent. Judge 26/6/2024 12

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Prepared on 14 October 2026 · Esheria