

TANZANIA / JUDGMENT

RULING SGA 1 for Tanzlii fine

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12 July 2024

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IN THE HIGH COURT OF TANZANIA (SUB - REGISTRY OF GEITA) AT GEITA MISC LABOUR
APPLICATION NO. 24357 OF 2024 (Origination from the Labour Dispute No. CMA/GTA/01/2023)
FESTO MANGALIA..... APPLICANT VERSUS SGA SECURITY (T)
LTD..... RESPONDENT

RULING

Date of last Order: 12/11/2024 Date of Ruling: 28/11/2024 K. D. MHINA, J. This is a ruling on an application for an extension of time within which an applicant can lodge an application for revision against the decision of the Commission for Mediation and Arbitration at Geita delivered on 12 July 2024. The application is by way of the Chamber Summons made under Rule 24 (1), (2) (a) (b) (c) (d) (e) and (f), (3) (a) (b) (c) (d) and 56 (1), (3) of the Labour Court Rules, G.N. No. 106 of 2007) 1|Page It is supported by an affidavit duly sworn by Frank Maganga, the applicant's personal representative. On the other hand, having been served with the application, the respondent filed its affidavit in reply duly sworn by Dickson Murati Webi, the respondent's principal officer. The brief facts of the application are basically that the applicant was an employee of the applicant as a Zonal Operation Manager on 28 July 2015. His services were terminated on 12 December 2022 for the reason that he violated the company's speed policies after he got into an accident at Chamagati- Kamanga road in Sengerema District when he had been driving the respondent's vehicle with registration No. T300 DJE. Aggrieved with that employer's decision, the applicant tried to challenge his termination by filing a labour dispute at the Commission for Mediation and Arbitration (CMA). However, his termination was confirmed by the CMA. Dissatisfied, the applicant now wishes to challenge the decision of the CMA by way of revision, but he found himself out of the prescribed time to file a revision; hence, this application is for an extension of time. 2|Page The application proceeded by way of oral submission. The applicant was represented by Mr. Frank Maganga, learned counsel, while the respondent was represented by Mr. Dioniz Mwasi, also a learned counsel. In supporting the application, Mr. Maganga raised only one ground, stating that the reason for the delay was a technical delay. He explained that after being aggrieved by the decision of CMA, which was delivered on 12 July 2024, the applicant filed an application for revision on 19 August 2024. However, on 24 August 2024, they discovered that the Deputy Registrar had returned the application due to an anomaly. Instead of filing the application as a labour revision in the appropriate electronic case management window, they filed it as a labour appeal. He further explained that they rectified the error and filed the revision

on the same date. That application was slated for a hearing on 10 September 2024; however, they discovered by filing the application on 24 October 2024 that we were out of time for one day. Therefore, they requested to withdraw the application with leave to refile the prayer, which was not objected to by the respondent and was granted by the court. 3|Page He concluded by submitting that what happened was a technical delay, which is excusable by law. To bolster his argument, he cited the decision of the Court of Appeal of *Consolata Mwakisú vs Director General of Nssf* (Misc. Civil Application 196 of 2021) [2022] TZHC 11150 (29 July

2022) (Tanzlii) In response, Mr. Mwasi resisted the application by submitting that the applicant had failed to advance a sufficient cause because there were no problems with the electronic case management system (eCMS); instead, it was negligence and ignorance of the law on the part of the applicant. He explained that the electronic case management system has no window for labour appeals. However, the document filed by the applicant was titled Labour Appeal, which indicates that the person who prepared the document/application was not conversant with the law. Mr. Mwasi further argued that when the Deputy Registrar returned the application, it was already out of time. Therefore, the applicant was supposed to apply for an extension of time, but instead, he applied for revision. 4|Page In the cited case of *Consolata Mwakisú* (Supra), he submitted that it is distinguishable because in the cited case, the application was struck out by the Court, so it was a technical delay; while in this application, the application was withdrawn by the applicant due to his negligence. In a brief rejoinder, Mr. Maganga submitted that the first application was filed on 19 August 2024 as a labour revision. However, it was lodged in the system in the window of labour appeals, and that was the reason why the Deputy Registrar returned it. Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the oral submission made by both learned counsel for the applicant and the respondents, the issue that has to be resolved is of utmost importance: whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to file an application for revision. In the application at hand, as I alluded to earlier, the applicant's only ground for the application is based on technical delay, that he was pursuing his right vide numerous previous applications. On the other hand, the respondent claimed that negligence and 5|Page ignorance shown by the applicant's side in pursuing his rights cannot constitute a technical delay. To determine the above controversy between the parties, it is vital to look at the overall circumstances surrounding the delay of the applicant in applying for revision. As previously alluded, the decision by CMA was delivered on 12 July

2024. On 19 August 2024, when the applicant was within the prescribed time to apply for revision, he filed an application for revision. However, it was returned by the Deputy Registrar for being improper as it was filed in the wrong window in the electronic case management system. On 24 August 2024, after discovering that the application was returned, the applicant's side rectified the error and filed the application for revision on the same date. When that application was slated for hearing on 29 September 2024, the applicant discovered that when he filed that application on 24 August 2024, he was out of

time for one day. Therefore, on the same day, i.e. 29 September 2024, he withdrew the application with leave to refile. On 30 September 2024, a day after he filed this application. Therefore, the question is whether the facts above constitute a 6|Page technical delay, as claimed by the applicant, or negligence and ignorance, as claimed by the respondent. On this, I have the following; One, the issue of technical delay is not a new phenomenon in our jurisdiction, as there is a plethora of authorities. For instance, in *Bharya Engineering & Contracting Co. Ltd vs Hamoud Ahmed Nassor* (Civil Application No. 342 of 2017) [2018] TZCA 339 (10 September 2018) (Tanzlil), the Court of Appeal put it succinctly that the prosecution of an incompetent appeal, when made in good faith and without negligence, ipso facto constitutes sufficient cause for an extension of time and delay arising from the prosecution of that appeal was not actual, it is a mere technical delay. From above, having gone through the record and submission, I find no evidence of bad faith on the part of the applicant in pursuing his rights. This is because, at first, he duly filed his application within time, but unfortunately, it was returned for being filed in the wrong window within the electronic case management system. In our laws, it is common ground for an aggrieved person to re-filing the struck-out or withdrawn (with leave to refile) application or appeal. If the 7|Page struct appeal or application is out of time, a part must first seek an extension of time by showing sufficient or good cause. In an application for an extension of time, one of the good causes is a technical delay if it is proven. This is because there is a difference between actual/ real delay and technical delay. See *Fortunatas Masha vs. William Shija and Another* (1997) TLR 154, where it was observed that; “a distinction has to be drawn between cases involving real or actual delays and those such as the present one which only involved technical delays in the sense that the original appeal was lodged in time but is incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant acted immediately after the pronouncement of the ruling of the court, striking out the first appeal. In these circumstances, an extension of time ought to be granted”. Two, regarding the issue that the applicant's side was negligent or ignorant of the law as raised by counsel for the respondent, the law is clear that negligence is not a sufficient cause for an extension of time. See *Yusufu Same & Another vs Hadija Yusufu* (Civil Appeal No. 1 of 2002)

[2006] TZCA 141 (20 October 2006), (Tanzlil) where the Court of Appeal stated as follows: - 8|Page "Generally speaking, an error made by an advocate through negligence or lack of due diligence is not sufficient cause for extension of time. This has been held in numerous decisions of the Court and similar jurisdictions.But there are times, depending on the overall circumstances io surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's advocate." From the above-cited position of law, I hasten to say that from the surrounding circumstances, nothing indicates that there was negligence or ignorance of law on the part of the applicant. The circumstances suggest that it was a bona fide mistake by the applicant after his application was returned, with instructions to rectify the errors and file it again. In the cited case of *Yusuph Same* (Supra), the Court of Appeal cited the persuasive

Kenyan case of *Githere vs. Kimungu*, [1976 - 1985] 1 EA 101 (CAK), where it was held that: "That where there has been a bona fide mistake, and no damage has been done to the other side which cannot be sufficiently compensated by costs, the court should lean towards exercising its discretion in such a way that no party is shut out from being heard; and, accordingly, a procedure error, or even a blunder on a point of law, 9 | Page on the part of an advocate (including that of his clerk) such a failure to take li prescribed procedural steps or to take them in due time, should be taken with a human approach and not without sympathy for the parties, and in a proper case, such mistake may be ground to justify the court in exercising its discretion to rectify the mistake if the interest of justice dictates, because, the door of justice is not dosed merely because a mistake has been made by a person of experience who ought to have known better." Flowing from above, it is; therefore, the period between the institution of application for revision on 19 August 2024, which was returned by the Deputy Registrar, and when this Court withdrew the application for revision on 29 September 2023, has been justified that the same is a technical delay. The critical question is whether the applicant promptly filed this application for an extension. The test of promptness has been settled by the Court of Appeal in a number of decisions. In *Emmanuel Rurihafi & Another vs Janas Mrema* (Civil Appeal No. 314 of 2019) [2021] TZCA 332 (28 July 2021) (Tanzlii) held that; 10 | P a g e "The test to determine promptness is the question of fact which has to be decided on a case-by-case basis." In the cited decision, the Court of Appeal found that 22 days was a reasonable time for collecting copies of the ruling and drawn order in the struck-out appeal, and preparing a meaningful application for an extension of time. Also, in the cited case, the Court of Appeal quoted earlier decisions on a similar issue. Those cases are; One, *Samwell Mussa Ng'omango* (as a legal representative of the Estate of the late Masumbuko Mussa) vs. A.I.C (T) Ufundi, Civil Appeal No.26 of 2015 (unreported), where a single justice of appeal considered the circumstances of the case and observed that the applicant acted promptly for filing an application in less than 20 days after obtaining the certificate. Two, *Hamisi Mohamed* (administrator of The Estates of The Late Risasi Ngawe) vs *Mtumwa Moshi* (Administratrix of The Late Moshi Abdallah) (Civil Application No. 407 of 2019) [2020] TZCA 13 11 | P a g e (21 February 2020) (Tanzlii), where also a single justice of appeal observed that a period of less than 30 days is a reasonable time. Therefore, in the instant matter, one (1) day for preparing this application for an extension of time is reasonable; the applicant acted promptly, and there is no inordinate delay. The law, under Rule 56 (1) of the Labour Court Rules G.N. No. 106 of 2007, accords this Court with discretion powers to extend time labour matters whenever there is good cause. The Rule reads that; "The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown unless the Court is precluded from doing so by any written law". Further, in *CRDB (1996) Limited Vs. George Kilindu*, Civil Appeal No 162 of 2006 CAT (Unreported) It was held that: "...sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant." In this application, the applicant acted promptly and gave a valid explanation for the delay. Further, there was no negligence on his part. 12 | P a g e

Therefore, from the above discussion, the applicant has advanced a good and sufficient ground to persuade this court to exercise its discretion in granting an extension of time. In the upshot, I grant this application for an extension time. The applicant shall file his application for revision within fourteen (14) days from the date of delivery of this Ruling. This being a labour matter, I order no costs. It is so ordered. K. D. MHINA JUDGE
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