

TANZANIA / JUDGMENT

JOSEPH MAINA V

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM MISCELLANEOUS
APPLICATION NO. 16581 OF 2024 JOSEPH MAINA APPLICANT
VERSUS KEBY'S HOTEL..... RESPONDENT

RULING

Date of Last Order: 03/09/2024 Date of Ruling: 06/09/2024 B. E. K. Mganga, J. Joseph Maina, the abovenamed applicant was an employee of the Keby's hotel, the abovenamed respondent. It happened that respondent terminated employment of the applicant as a result the latter filed the dispute before the Commission for Mediation and Arbitration (CMA). At CMA, the arbitrator issued an award in favour of the respondent that the application was time barred. While within time, applicant filed revision NO. 10099 of 2024 but the same was struck out on 09th July 2024 after the court sustaining preliminary objection raised by the respondent that the application was incompetent because the Notice of application was defective. Being out of time, applicant filed this application for extension of time within which to file revision out of time. In the affidavit of 1 Modesta Medard, advocate of the applicant, in support of the Notice of Application, it was deponed that the delay is technical and prayed the application be allowed. Resisting the application, respondent filed the Notice of Opposition and the counter affidavit sworn by Franco Mahena, her principal officer. In the said counter affidavit, it was deponed that applicant was negligent in filing the revision that was struck out for being incompetent. It was further deponed that applicant has not adduced good reason for the delay and that, he has not accounted for each day of the delay. When the application was called on for hearing, Ms. Modesta Medard, advocate appeared and argued the application for and on behalf of the applicant while Mr. Geoffrey Lugomo, advocate appeared and argued for and on behalf of the respondent. Arguing in support of the. Application, Ms. Medard submitted that, initially applicant filed Revision No. 10099 of 2024 while within time but the same was struck out on 9th July 2024 for want of notice of application. She submitted further that, on 10th July 2024 applicant was served with the court order striking out the said revision application and that, applicant filed this application on 11th July 2024. Counsel for the applicant further submitted that the delay is technical and not actual. She therefore prayed the court to allow this application. 2 Resisting the application, Mr. Lugomo submitted that, the delay is not technical but a clear negligence of an advocate of the applicant. He added that, negligence of an advocate is not a ground for extension of time and cited the case of Abdallah Jumbo Kambale v. Noradi Tiliko Mongelwa, Civil Appeal No. 231 of 2018, CAT

(unreported) and Omari Salam Chitanda (as Administrator of the Estate of Deceased Abdallah Seif) v. Rev. William Mathayo Mtenga, Misc. Land Application No. 48 of 2021, HC(Unreported) to support his Submissions. In his submissions, counsel for the respondent admitted that, initially applicant, while within time, filed an application for revision but the same was struck out. Counsel for the respondent submitted further that, in the affidavit in support of the Notice of Application, applicant pleaded technical delay but prayed the court to grant an application based on illegalities. He added that, in her submissions, counsel for the applicant did not submit on illegalities. He went on that; parties are bound by their own pleadings. With those submissions, counsel for the respondent prayed the application be dismissed for want of merit. In rejoinder, counsel for the applicant submitted that, Kambale's case (supra) is in applicant's favour because, negligent of an advocate cannot be used to penalize the applicant. She added that, in her 3 submissions, she adopted the affidavit in support of the application hence, contents of the affidavit are well taken on board. She reiterated her submissions in chief and the application be allowed. I have examined the affidavit in support of the application and the counter affidavit opposing this application and considered submissions made on behalf of the parties and find that, it is undisputed that, initially, applicant filed revision application No. 10099 of 2024 while within time. It is also undisputed by the parties that, the said application was struck out for want of the Notice of Application. It was deponed and submitted on behalf of the applicant that, the delay is technical hence, a good ground for extension of time. I should point out that, there is a litany of case laws to the position that, technical delay is a good ground for extension of time. Some of those case laws are the case of William Shija v. Fortunatus Masha [1997] TLR 213, Emmanuel Rurihafi & Another vs Janas Mrema (Civil Appeal 314 of 2019) [2021] TZCA 332 and 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). 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 4 prosecution of the incompetent appeal constituted sufficient cause for extension of time." In the application at hand, as pointed shortly a while, applicant filed Revision No. 10099 of 2024 within time, but the same was struck out on 9th July 2024 for want of the Notice of Application. It is also undisputed by the parties that, on 10th July 2024, applicant was served with the order that struck out the said revision and that, on 11th July 2024 he filed this application. It is clear from the foregoing that, applicant promptly filed this application after revision No.10099 of 2024 was struck out. It is also clear that, the delay was technical and not actual hence a good ground for extension of time. It was submitted on behalf of the respondent that, there is no good reason for extension of time because, applicant negligently, filed the aforementioned revision, as a result, the same was struck out. With due respect to counsel for the respondent, filing of an incompetent application alone does not amount to negligence. That can be attributed to wrong appreciation of the law which does not amount to negligence. As pointed shortly a while, there was no negligence whatsoever, by the applicant's advocate. It was deponed and submitted on behalf of the respondent that, applicant did not account for each day of the delay. With due respect to 5 counsel for the respondent, I don't see the logic of that submissions. The facts are clear that, applicant filed

Revision No. 10099 of 2024 while within time but the same was struck out on 9th July 2024. It is also undisputed that, on 10th July 2024 applicant was served with the order that struck out the said revision and that, on 11th July 2024, he filed this application. There is no day that was not accounted by the applicant. For the foregoing, I allow this application and grant applicant Fourteen (14) days within which to file his intended revision. Dated at Dar es salaam this 06th September 2024 B. E. K. Mganga JUDGE Ruling delivered on this 06th September 2024 in Chambers in the presence of Geoffrey Lugomo, Advocate for the Respondent but in the absence of the Applicant. B. E. K. Mganga JUDGE 6

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