

TANZANIA / JUDGMENT

MOSES DAUDI EXTENSION OF TIME

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA AT SHINYANGA MISC. LABOUR APPLICATION NO. 17643 OF 2024 (Arising from the Award of the Commission for Mediation and Arbitration Shinyanga Ref. No. CMA / SHY/59/2023.) MOSES DAUDI..... APPLICANT VERSUS THE REGISTERED TRUSTEES OF EVANGELICAL LUTHERAN CHURCH OF TANZANIA.....1ST RESPONDENT MWADUI SECONDARY SCHOOL.....2ND RESPONDENT

RULING

29th August & 11th October, 2024. MASSAM J.: Moses Daudi moved this court for an order of extension of time within which he may file an application for revision against the decision of the Commission for Mediation and Arbitration awarded in favour of the respondent Ref. No. CMA/ SHY/59/2023 in which awarded in favour of the respondent by disregarding the fact, the applicant's Employment was terminated without affording him, the right to be heard. This application was made by way of chamber summons under rule 24 (1), 24 (2), (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c), (d) and 1 rule 55 (1), 56 (1) (2) (3) of the Labour Court Rules, GN No. 106 of 2007. An affidavit sworn by Moses Daudi, supported the application. Moses Daudi pointed out reasons for the delay in paragraphs 13 of the affidavit, thus; "13. That on 11th April 2024 was Eid el Fitri holiday, I called counsel Deus on 12 April 2024 to inquire if the application was already filed but to my surprise, counsel Deus had not filed the said application on the reasons that he was occupied with his families problems and thus he could not get time to prepare the application" This application was opposed by respondent in his counter affidavit which sworn by Mashiku Mashallah Jumanne principal officer of the respondents herein that "9. That, the content of paragraph 13 are strongly disputed and the applicant shall put into strict proof thereto. Furthermore, the respondent avers that this assertion is nothing but a mere assumption based on hypothetical allegations, vexatious and frivolous claims 2 which are intended to embarrass this honourable court with the claims of which has no like hood of success in light of law due to the fact that the applicant during the trial at commission he was represented by two different advocates, so he was at liberty to find another attorney to save the day" This application was canvassed by way of written submissions and parties dutifully complied to the schedule set by the Court. During the hearing of this application, the applicant enjoyed legal service of Ms. Martha P. Mbosoli learned advocate, while the respondent was represented by Paul Bomani

learned advocate. Arguing in support of the application, the applicant's counsel adopted the affidavit by the applicant to form part of his submission. In submitting the same Ms. Martha prayed to be guided by the decision of *Lyamuya Construction Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania*, Civil Application No2 of 2010 (Tanzilii) in the Court of Appeal at page 6 of the decision gave a guideline of what should be considered in all application for extension of time as follow; 3 ".....on the authorities however, the following guideline may be formulated; -

- a) The Applicant must be accountable for all period of delay
- b) The delay should not be inordinate
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the Action that he intends to take.
- d) If the court feels that, there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged. Also, Ms. Martha submitted that in accounting for period of delay, the applicant as stated at paragraph 9 and 12 of his affidavits as he was supposed to file his application for Labour Revision by 12/04/2024 after obtaining the award on 1/03/2024. She submitted further that the applicant filed Application for extension of time with reference No.

2024042910000009248 on 24th April, 2024 and as stated in paragraph 22 the same was stuck out with leave to refile hence this Application. That to say there was 12 days. Ms. Martha referred at paragraph 13, 14, 15, 16 and 17 of the applicant's affidavit. Paragraph 13 of the 4 applicant affidavit indicated that the delay was due to reasons that he was looking for another advocate to handle the matter. After obtaining the service of Mr. Kalaka advocate, the advocate realized that the application was already out of time hence he filed the application in 12 days only. That is to say, the applicant managed to account for 12 days of delay. Additionally, Martha argued on whether the delay was inordinate, the answer is that, it was not inordinate due to the fact that the delay was only for 12 days and there was a change of advocate who was supposed to prepare documents for filling of the Labor Revision. Under that circumstance, she finds the applicant delay to file Labor Revision to be inordinate. She forties her argument by referring the case of *Yusuph Juma Mazwili and Another vs. Mining Commission and 3 others Misc. Civil Application No. 9390 HC MZA (TanzL11)*. Notably, Ms. Martha clarified that the important criteria for extension of time is established in the case of *Lyamuya Construction Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 is that; 5 "If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged" Furthermore, Ms. Martha submitted that there is a point of law in the decision intended to be challenged by the applicant and his employment was terminated without affording him the right to be heard. She cemented her argument by citing a case of *VIP Engineering and Marketing Limited and 2 others vs Citibank A Tanzania(T) Limited*, Consolidated Civil Reference No. 6,7 and 8, the Court of Appeal at page 22 said: "We have already accepted it as

established law in this country that, the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes sufficient reason within the meaning of rule 8 of the rules for extending time” Again, she insisted that in the above cited case the court insisted that in the administration of justice the right to be heard is the most overriding. Also, Ms. Martha argued that in his reply the respondent contended that the applicant was given the right to be heard but we all know that 6 disciplinary meetings are always reduced into writing but nothing was annexed. Finally, Ms. Martha prayed this application to be granted since the applicant has managed to comply with the requirement for extension of the time. The respondent resisted the application, by citing Section 91(1) (a) of the Employment and Labor Relation Act Cap. 366 R:E 2019, which stating that it is requirement of the law that any party aggrieved by the CMA award to file revision within six weeks from the date of award. He clarified that the CMA award was delivered on 1/03/2024 and the application for extension for first time was filed 24/04/2024 in which he was out of time for 12 days due to the reasons that he was looking for another advocate to handle the matter. Mr. Paul Bomani submitted that the court has conferred with discretionary power to grant extension of time upon sufficient reasons for delay has been shown by the applicant. However, in this instant application the applicant stated that the only reasons which made him to delay to file revision was looking for an advocate to handle his matter but he failed to show how the same made him to delay. 7 Also, he argued that the reasons advanced by the applicant on his delay it is baseless and intending to mislead the court as there is no any evidence a part from empty word which has been shown by the applicant than the reasons of looking an advocate. Mr. Paul cemented his argument by referring the case of Benedicto S.B Mahela vs Tanzania Bureau of Standards, Miscellaneous Application No. 632 of 2019 (reported at TanzLll), the court was of the view that ”an application for extension of time each day passes must be counted, to prove to the court the delay is in ordinate, and to show diligence not apathy and negligence in the prosecution of the action he intended to make”. Apparently, Mr. Paul submitted that the applicant counsel stated the reasons of the illegality in order to be granted extension of time but there is nowhere the applicant pointed out any illegality in the impugned judgment. He submitted that he did not point any illegality in the award instead he mentions the disciplinary procedure which was determined during the trial hence failure to point illegalities in the decision to be clanged is fatal. He forties his argument by referring the case of Wilson Sirikwa vs. Mikael Moll, Civil Application No. 544/02 of 2021 8 (TanzLll) where the court dismissed the application for extension of time due to failure to point illegalities in the decision to be challenged. Moreover, Mr. Paul submitted that justice is not only for the applicant but justice must be for both parties to the dispute as the old maxim say “vigilantibus on dormientibusjurassubveniut” which literally means that the law assists the vigilant and not those who sleep and assisting by the old decision delivered on 20/01/1987 in Lindsey Petroleum Company vs Hurd and Others (1973-74) LR 5PC, the privy council stated that;- “the doctrine of laches in court of equity is not arbitrary or technical doctrine, where it would be practical unjust to give a remedy ether because the party has by his conduct done that which might fairly be `regarded as equivalent to a waiver of it or where by his conduct and neglect he has thought perhaps not

waived that remedy, put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most important”⁹ Finally, Mr. Paul submitted that the applicant had failed to account the delay time and he prayed the applicant application to be dismissed with costs for lack of merits and the judgment and proceeding of commission for mediation to be maintained. In the side of Ms. Martha there was no rejoinder submitted. Having heard and considered the submissions by both parties, the issue is whether the application discloses sufficient cause for extension of time. After going through the parties’ arguments, I noticed that the applicant prayed to this court to be granted extension of time to file an appeal out of time because of looking for another advocate and illegality. To commence with, it is clear in the case of *Tanga Cement Company Limited Vs Masanga and Amos A. Mwalwanda*, Civil Application No. 6 of 2001, for a person to apply for extension of time, has to disclose sufficient reasons, which was defined as follows; “What amounts to sufficient cause had not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid¹⁰ explanation for delay, lack of diligence on the part of the applicant.” However, there are also other factors that are used to determine whether the applicant has shown good and reasonable cause such as the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant. See the case of *Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported). With regard to the issue of looking for another advocate. Ms Martha argued that the applicant’s affidavit indicates that the delay was due to reasons that the applicant was looking for another advocate to handle the matter. However, Mr. Paul argued that the applicant failed to show on how looking for an advocate made him to delay. I have gone through submission of both parties and records. Indeed, there is no dispute that the applicant filed the case after elapse of 12 days, in the sense that applicant was supposed to file his application on 12/04/2024 after obtaining the award on 01/03/2024 but he filed the same on 24th April, 2024. However, under paragraph 13 of the applicant’s affidavit indicates that delay was due to the reasons that¹¹ he was looking for another advocate to handle his matter. Good enough after the applicant discovered that his counsel did not file the case as instructed, he took step instantly to look for another lawyer to file the same and he counted each day delayed as per paragraph 15, 16, 17, 18, 19 and 22 of the applicant’s affidavit. I agree with Ms. Martha that delay of filing the case was not inordinate and the applicant had counted each day delayed and not as alleged by Mr. Paul who stated that the applicant failed to count each day of delayed and even the cases submitted by respondent’s counsel was distinguishable at the case at hand because the applicant proved to the court that the delay was not inordinate and he was diligent in prosecuting the matter. Moreover, the courts have been always said that it is worse to punish the clients out of mistakes done by their advocates. This was held in the case of *Ghania J. Kimambi vs. Shedrack Ruben Ng’ambi*, Misc. Application No. 692 of 2018, High Court of Tanzania at Dar es Salaam (unreported) the Court observed the following; - “What happened to former Applicant Counsel, is pure and simple negligence of an Advocate and not

otherwise, it sounds unfair and inequitable in my considered opinion for a part in civil litigations to be punished for an error committed 12 by the Advocates and more specifically where the error is within the domestic affairs of the Advocate. Throughout history. Courts of law have assumed the position of custodians of justice. It therefore comes as a surprise and indeed lowers down the reputation and respect of the Court when parties submitting themselves to the jurisdiction of the court loses their cases for wrong committed by their Advocates or representative”. See the cases of Citibank Tanzania Limited vs. Emma Mwenda and Edna Nduguzi, Miscellaneous Labour Application No. 489 of 2020 High Court of Tanzania Labour Division at Dar es Salaam (unreported), Kambona Charles (as administrator of the estate of the late Charles Pangani) vs. Elizabeth Charles Civil Application No. 529/17 of 2019, High Court of Tanzania at Dar es Salaam District Registry (unreported). From above analysis. I find that the applicant had counted each days delayed and for the sake of protecting rights of the litigant, the applicant cannot be punished for negligence of his advocate one Deus Richard who failed to file the case as instructed due to his family problems. 13 On the issue of illegality. Ms. Martha argued that the applicant was terminated without affording him the right to heard. She insisted her argument by referring the case VIP Engineering Case (supra) that in the administration of justice the right to be heard is most overriding. More over she said that even the counter affidavit filed by the respondent does not prove that the applicant was accorded the right to be heard. On his side Mr. Paul said that the applicant did not point any illegality in the impugned decision and failure to point illegality is fatal. He rereferred the case of Wilson Sirikwa (supra). Before I resolve this issue, I wish to quote paragraph 6 and paragraph 10 of the applicant’s affidavit; paragraph 6 reads that;- “I was not afforded with right to be heard before the termination of the employment” Also, paragraph 10 of the applicant’s affidavit reads; “that there was no justified reasons by the respondent substantially and procedural for my termination as there was no any disciplinary meeting held to justify termination” In consideration of the extracted paragraphs of the applicant’s affidavit and submission from both parties. This court agree with 14 submission of Ms. Martha that there was illegality in the impugned decision and the applicant was terminated unheard and not as alleged by the respondent counsel that the applicant failed to point illegality and even the case of Wilson Sirikwa (supra) is distinguishable with the case at hand because the applicant pointed illegality in the impugned decision. In the case of VIP Engineering and Marketing Limited and 2 others vs Citibank A Tanzania(T) Limited, Consolidated Civil Reference No. 6,7 and 8, the court of appeal at page 22 said “ “We have already accepted it as established law in this country that, the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes sufficient reason within the meaning of rule 8 of the rules for extending time” Guided by the above authority this court does not see the reason as to why this application should not be granted. That being said this court is fully satisfied that the applicant has demonstrated good cause to have the order sought granted. Subsequently, this application is allowed and the applicant is granted time to file revision against the decision of the Commission for Mediation and Arbitration Shinyanga Ref: No. 15 CMA/SHY/59/2023 dated on 01/03/2024 and shall be filed within 14 days from the date of delivery of this ruling.

I make no orders for costs. It was so ordered. DATED at SHINYANGA this 11th day of October, 2024. R. B. Massam JUDGE 16

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