

**IN THE HIGH COURT OF ZANZIBAR**

**(INDUSTRIAL DIVISION)**

**HELD AT TUNGUU**

**CIVIL APPLICATION No. 30 OF 2021**

**(Application for extension of time to file an appeal)**

- 1. HAMADA MWAVURA HAJI**
- 2. HAJI NAHODA HAJI**
- 3. FELISTA SIMON BUNDALA**
- 4. HAMAD DARASA ADBI**
- 5. SHOTO STAMBULI MOHAMED**
- 6. SAADA MOH'D MIKIDADI**
- 7. GEORGE BENEDICK MOSHI**
- 8. MUSSA OMAR HAMAD**
- 9. MWALIM MOH'D MIKIDADI**
- 10. KHATIBU JUMA HAJI**
- 11. SAUM ABDI MASHI**
- 12. ABDALLA ABDI MPATE**
- 13. ALFONS WILLIUM JOHN**
- 14. JOSEPH BALELE KISINZA**
- 15. MAKAME JAKU ALI**
- 16. YAHYA JECHA ALI**
- 17. ALI KITEGA AME**
- 18. MOH'D MBAROUK MOH'D**
- 19. ZAHRAN JUMA JAFAR**
- 20. KHAMIS FAKI MAKAME**
- 21. ASHA JAFAR HAJI**
- 22. MWADINI JUMA MWADINI**
- 23. BARUA MCHA BARUA**
- 24. JUMA JUMA MDUNGI**
- 25. ABUU KAZMIL**
- 26. ABDALLA MUSSA ABDALLA**

27. JUMA OTHMAN CHANDE
28. SABRI SULEIMAN ZAHRAN
29. ABDILLAH MZIHIRI KINERO
30. BAKAR MOH'D ALI
31. MOH'D KHAMIS OMAR
32. HAJI JABIR HAJI
33. MZEE ALI JUMA
34. JUMA AJALI JUMA
35. SALUM ABEID JUMA
36. RICHARD MARK MSEKE
37. AMOS JOHN KIENS
38. SULEIMAN HAMADA MWAVURA
39. PASCAL DARUS DILUNGA
40. AZIMIO JUMA SALEH
41. AMIR JAFAR MWANYUKI
42. NASSIB RAMADHAN JUMA
43. KHAMIS OTHMAN ALI
44. DAUDI SHAABAN SIMBA
45. AME HAJI NAHODA
46. KOMBO VUAI SILIMA
47. CHALES PETRO NKEN
48. MUSTAFA MCHA ABDALLA
49. SIMBA HAROUN SIMBA
50. YUSSUF JUMA KHAMIS
51. OMAR AMOUS SHEKIONDO ..... APPLICANTS

**VERSUS**

**THE MANAGING DIRECTOR  
RENCO TANZANIA CONSTRUCTION LTD  
MSASANI, DAR-ES-SALAAM  
C/O MARCO SIGISMONDI  
P. O. BOX 4831  
ZANZIBAR .....RESPONDENT**

## **RULING**

19<sup>th</sup> October, 2022

**A. I. S. Suwedi, J**

Applicants are applying for an order for extension of time to file an appeal before this Court under Rule 41 (2) and Rule 55 (1) (2) (3) of the Industrial Court Rules, 2021. The application which was heard in the absence of the respondent under Order XI, Rule 6 (1) (a) of the Civil Procedure Decree, Cap 8 and Rule 54 (1) of this Court Rules (supra) after being dully served and not entered appearance.

On the hearing day, the applicants were represented by the learned counsel Suleiman Omar Suleiman who adopted the affidavit in support of the application as part of the applicants' submission. He additionally submitted that applicant filed a revision before this Court instead of an appeal and this Court struck out the application, the fact which made applicants to be out of time. He finally requested for the application to be allowed.

From there I have perused the application and I did not find any attachment to this application and for that I failed to see the reason behind this application, what is intended to be appealed and also I failed to catch the facts of the case. Hence, I decided to read the affidavit

which contains seven paragraphs so as to see what was going on and for quick reference I am reproducing it as follows:

**I, SULEIMAN OMAR SULEIMAN**, adult, Muslim, male resident of Zanzibar do hereby **SOLEMNLY SWEAR** and state as:

1. That, I am an advocate of the High Court of Zanzibar and applicants counsel for this application who has been authorized by applicants to swear this affidavit hence I am well conversant with all material facts and issues relevant herein therefore I am able to depose this affidavit.
2. That, applicants in this application were required to apply out of time in the High Court Labour Unit but requested review in that Court which is contrary to the procedure of the Legal Requirements.
3. That, the applicants did not submit the appeal within the time frame set by the Act as they initially felt that the agreement to dismiss them in terms of operational requirements was participatory, although it went urgently but they hope to receive their benefits as required by the Act.
4. That, after discovering that their benefits were contrary to the procedure they asked to meet the employer to get information on how it violated the procedure but employer

began to give them promises to meet and later began the procedure to meet him but without success.

5. That, their employer was spinning them and promising them unfulfilled promises, with the aim of delaying them, while telling them that he had already finished about the payment.
6. That, applicants further state that after following their employer for a period of three months without any success and discovering that the employer has fulfilled his need to waste their time then they realized that there is a need to take this matter to Court to get their rights.
7. That, the applicants still need to secure their fundamental rights and believe that the rights exist and they have the opportunity to obtain it in accordance with the Act. It is good that the Court to exercise of their.

.....

Assessors were successfully taken through the records and the relevant laws. Upon being requested to give their opinion, they were into the applicants' favour that the extension should be granted for the interest of justice.

As I said earlier that I failed to see what the applicants are intending to appeal against and I do not the date the matter intended to be appealed was given. But the fact that the matter was under the care

of the learned advocate, I do believe the applicants are out of a prescribed time of that appeal they intended. Although, I have missed those facts, I decided to observe the law where this Court has been given powers to extend time under Rule 55 (1) of the Industrial Court Rules (supra). The provision says:

55(1) The Court may extend or abridge a period prescribed by these Rules on application **and on good cause shown**, unless the Court is precluded from doing so by any written law.  
[Emphasis added]

Form the provision, the powers cannot be invoked unless the applicant supplied good cause. From the records, the decision intended to be appealed is unknown and worse enough there is no any reason given by the applicants in the affidavit as well as in the submission done.

Counsel Suleiman in his short submission said that the applicants filed an application for revision which was struck out by this Court. Hence I opted to consult registry of this Court and I found that it was true that the applicant have had filed the application for revision against the decision of the Labour Commissioner given on 08/09/2019. Having discovered section 121 (5) of the Employment Act, No. 11 of 2005 that the remedy for the decision of the Commissioner for Labour on redundancy is to file an appeal within one month, on 23/07/2021

counsel Suleiman prayed for the application to be withdrawn an order which was granted on the same day.

I can take the reason that the applicant mistakenly filed an application for revision instead of appeal as required by the law as an excuse for the delay. But the application for revision as said earlier withdrawn on 23/07/2021 and this application filed 19/11/2021 which makes the delay of 3 months and 26 days (118 days). Again, no reason for the delay was given by the applicant for these 118 days period.

In **Palumbo Reef Co. Ltd v. Colin Ali Abdalla Duchi**, Civil Application No. 105/2017 (unreported), in which the applicant filed an application for enlargement of time 17 days from the termination of the application for stay of execution. **Hon. Ndika, J. A** had this to say:

.....I have no difficulty finding the delay up until 6<sup>th</sup> December 2016, when the first application for stay of execution was terminated for its incompetence, as excusable technical delay

He held further that:

Nonetheless, **while noting that following the termination of the initial application the applicant waited for over seventeen days until 23<sup>rd</sup> December, 2016** to lodge the present application, I am mindful that the supporting affidavit offers no explanation why the present entreaty was not filed much earlier. **I expected the applicant to establish that it**

**acted promptly and expeditiously to apply for extension after its initial stay application was struck out.** [Emphasis is given]

My understanding from that holding is that an issue was not the delay in original application which was struck out, but the 17 days (from the date the application for stay of execution was struck out). Instantly, the applicant stayed for 3 months and 26 days and they offer no explanation for the delay. 17 days was taken as an issue what about 118 days? Hence, I am departing from assessors' opinion since no good cause has been given.

From the reasons stated, I am holding that no good cause have been shown to warrant this Court to exercise the discretion vested under Rule 55 (1) (supra). Consequently, I am dismissing the application in it's entirety.

**DATED at TUNGUU ZANZIBAR this 19<sup>th</sup> day of October, 2022**



**A. I. S. Suwedi**

**JUDGE - INDUSTRIAL COURT**



