IN THE HIGH COURT OF ZANZIBAR

(INDUSTRIAL DIVISION)

HELD AT TUNGUU

INDUSTRIAL APPLICATION No. 04 OF 2024

(Application for extension of time to apply to set aside default Judgment given in the Dispute No. DHU/M.MG/180/2022 on 05/06/2023, Hon Nemshi Abdalla)

CRJE .... APPLICANT

VERSUS

HUSSEIN JUMA ABDALLAH.............................RESPONDENT

RULING

05th November 2024

A. I. S. Suwedi, J

Since the applicant is requesting this Court to extend the time to apply to set aside a default judgment given in Dispute No, DHU/MMG/180/2022 on 05/06/2023, then he has an obligation under Rule 55 (1) of the Industrial Court Rules, 2021 (the Rules), to supply good cause as to why he delayed filing the intended application within the required time. The background of this application is that, before the Dispute Handling Unit (the Unit), the respondent filed a dispute, Dispute No. DHU/MMG/180/2022 claiming to be unfairly terminated by the applicant. The Dispute was taken before the Mediator as required by law, but the applicant did not show up. The Hon. Mediator entered default

judgment under section 77 (4) of the Labour Relations Act, No. 1 of 2005, by ordering the applicant to pay the respondent TZS 3,900,000/- as one month's salary (November 2022) and 12 months' salary as compensation for unfair termination and the certificate of service.

On the hearing day, the applicant was represented by learned counsel Elizabeth Elias, and the respondent appeared through learned counsel Adam Mtingwa.

Ms. Elias adopted the affidavit supporting the application and submitted that the applicant had earlier applied for a review, Application No. 24/2023. The same was struck out on 11/06/2024 because the appropriate remedy for a default judgment is to apply to set aside and not review. From 11/06/2024 to 13/06/2024, it is just 2 days which the applicant used to negotiate with the advocate and the preparation by the advocate to prepare this application. Ms Elias further cited a case of **Geita Gold Mining Ltd v. Anthony Karangwa**, Civil Appeal No. 42 of 2020 (unreported), on page 10, and she prayed for the application to be granted.

The learned counsel, Mtingwa, objected to the application because the applicant needed to count the days from 11/06/2024 to 13/06/2024. He stated that the applicant is duty-bound under Rule 55 (1) of the Rules

to provide good cause and must count each day of delay. He finally prayed for the application to be dismissed.

Ms. Elias rejoined that the applicant had provided good reasons for the delay. After the previous application was struck out, the applicant proceeded to prepare this application, and so she reiterated her previous submission and prayer.

The application was heard with assessors, as required by the law, and they successfully gave their opinions. Both assessors believed that the applicant failed to supply good cause and that the application must be dismissed.

Records before the Unit show that the dispute was filed on 12/12/2022, and mediation proceedings started on 31/01/2023. The applicant was present but did not attend the three continued sessions (04/04/2023, 12/04/2023, and 19/04/2023). Hence, on 05/06/2023, the Hon. Mediator entered a default judgment under section 77 (4), as stated earlier. Then, the applicant applied for review on time, which this Court struck out on 11/06/2024 as review is not an appropriate remedy for the default award.

The remedy available for a default award is found under section 77 (5) of the Labour Relations (supra), which says:

> Where ex-parte order or default judgement is made, the party against whom the order or judgement is made may apply before

> the Court for rescission of such order or judgement and the Court may on good cause being shown by the applicant rescind the order or judgement and order re-hearing of the matter in accordance with the procedure.

The provision did not provide for a time limit, but this Court, in the case of **Zanzibar Flowers Limited v. Kali Awesu Jabir**, Industrial Application No. 10 of 2022, set 14 days to apply to set aside a default judgment. It was held that:

> Kwa msingi huu, mtu yeyote ambae tunzo ya upande mmoja imetolewa dhidi yake na Msuluhishi ama Muamuzi chini ya kifungu cha 77(4) cha Sheria ama chini ya Kanuni ya 53 (1) (b) ya Kanuni za Usuluhishi na Uamuzi za mwaka 2011 ataomba kutengua tunzo ama amri ile chini ya kifungu cha 77 (5) ndani ya siku 14 tokea kupata uelewa wa kuwepo kwa tunzo ama amri husika.

The clause directed any person against whom a default order or judgement is made under section 77(4) of the Labour Relation Act (supra) or Regulation 53 (1) (b) of the Labour Relations (Mediation and Arbitration) Regulations of 2011, to apply before this Court to set aside the order or judgment under section 77 (5) within 14 days from the date acquired knowledge of the existence of the order or judgment. On this basis, the applicant is out of the required time and is applying for an extension.

On the other hand, the position of law is correct, as counsel Mtingwa stated, that the applicant is duty-bound to count each day. The Court of Appeal of Tanzania, in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), said that;

> Delay, of even a single day, has to be accounted for; otherwise, there would be no point in having rules prescribing periods within which certain steps have to be taken

However, it is also a legal position where the technical delay is pleaded as a ground, it is acceptable, and it constitutes a sufficient cause for the extension of time. This principle was stated in the case of **Fortunatus Masha v. William Shija and Another** (1997) TLR 154. Also, in **Amani Girls Home v. Isack Charles Kanela,** Civil Application No. 325/08 of 2019, the same position was stated that a diligent pursuit of the appeal through unsuccessful applications is a cause sufficient enough for a grant of extension of time. In **Victor Rweyemamu Binamungu v. Geoffrey Kabaka & Another,** Civil Application No. 602/08 of 2017 (unreported):

> Be it as it is, he first applied for revision, which was, however, struck out on 4h December 2017 on account of time limit. This period from the date of the decision intended to be revised to the date of striking out Civil Application for revision No. 26 of 2017, has acquired the name of technical delay which cannot be blamed on the applicant.

In Palumbo Reef Co. Ltd v. Colid Ali Duchi, Civil Application No. 105/2017 (unreported), the Court did not have difficulty finding the cause of the delay until 6 December 2016, when the first application for a stay of execution was terminated for incompetence as an excusable technical delay.

All those authorities show that the period during which the applicant had another matter which struck out due to technicalities, that time should be forgiven. The time to be taken into account is the time from the previous matter was struck out to the time the application for an extension of time was filed.

In the instant application, from what has been averred in the affidavit supporting this application, the previous application for review was struck out on 11/06/2024, and this application was filed on 13/06/2024. The applicant's advocate contended that she used the two days to talk to the applicant and prepare the application. Since the reason for having another matter before the court is acceptable as a reason to extend the time, I think that the applicant must prove that he had an application before the court. Still, the records of this application do not show that. Save for the averment within the affidavit, the applicant did not attach anything supporting the averment that he had an application and that the same was struck out. That is to say, no records of the

previous application have been provided. On the other hand, counsel Mtingwa did not object to the applicant having another application before the court, so I assume that all the facts have been accepted. Based on the above-cited authorities, a technical delay, as raised by the applicant's counsel, is reasonable grounds to warrant this application.

The remaining issue now is the dates from 11/06 to 13/06/2024, two days after the previous application was struck out. Ms Elias contended that she used these two days to negotiate with the applicant and prepare the current application; I believe the time spent is reasonable, whereby, in reality, only one day was idle (12/06/2024), and this application was filed on the second day (13/06/2024). Therefore, I'm afraid I have to disagree with the respected opinion of the two assessors.

As a result, I am allowing the application and so the application to set aside the default judgment in Dispute No. DHU/MMG/180/2022, given on 05/06/2023, has to be lodged within seven (7) days from the date of this ruling.

DATED at TUNGUU ZANZIBAR this 05th November 2024

A. I. S. Suwedi

JUDGE - INDUSTRIAL COURT