

**IN THE HIGH COURT OF TANZANIA  
(LABOUR DIVISION)  
AT SUMBAWANGA  
MISC. LABOUR APPLICATION NO 15 OF 2019**

**ALINASWE LEVIS MSUKWA ..... APPLICANT**

**VERSUS**

**CHINA HUNAN CONSTRUCTION ENGINEERING**

**GROUP AFRICA LTD ..... RESPONDENT**

**RULING**

**W.R. MASHAURI**

**30/04/2020 & 21/05/2020**

By dint of the notice of application and the chamber summons filed in this court by the applicant under Rule 24 (1), 24 (2), (a), (b), (c), (d), (c), (f) and 24 (3) (a), (b), (c), (d), and Rule 55 (1) and Rule 56 (1) or (2) or (3) (a) of the Labour Court Rules of 2007, this is an application for extension of time within which, the applicant to file an application for review against the ruling of this court delivered on 15/04/2019 and any other orders/reliefs that this court may deem just to grant.

And as per notice of opposition filed under Rule 24 (4) (a) and (b) of the Labour Court Rules 2007 G.N. No. 106 of 2007 by the respondent, is that the applicant has on genuine grounds within which this court can grant extension of time for review of the ruling issued by this court on 15/04/2019.

The applicant in this application is represented by Mr. Omary Khatibu Salehe representative where else the respondent is represented by Bryson P. Ngulo representative.

When the parties representatives entered appearance in court on 30/04/2020, they all unanimously asked leave of the court to dispose of this matter by filing written submissions and their prayer was granted.

The applicant's application is supported by an affidavit deponed by Omary Khatibu Salehe representative and the counter-Affidavit by the respondent is deponed by Mr. David Shiweiwei representative.

In his written submission in support the application, Mr. Omary Khatibu Salhe learned counsel contended as well as he does in his affidavit that, the applicant being dissatisfied with the ruling delivered on 15/04/2019 decided to file an application for review to challenge the said ruling. The said application for review was determined by way of filing written submission on the two points of preliminary objection raised by counsel for respondent.

On 2<sup>nd</sup> December 2019, this court struck out the application for review for the reasons that, it is incompetent in the eyes of law.

That, Rule 27 of the Labour court Rules (GN. No. 106/2007 the applicant complied with the issue of time, but after the ruling of 2<sup>nd</sup> December 2019, the applicant is now out of time and hence this application for extension of time. After the applicant filed an application for review, the

matter was first come for mention on 15<sup>th</sup> /04/2019, the matter was not heard because the court was on criminal session.

On 17/06/2019, the matter was ordered to be disposed of by written submission. The matter was set for ruling on 15/10/2019 later adjourned for ruling on 2<sup>nd</sup> December 2019 and was delivered.

That, at law an extension of time may be given by the court upon good and sufficient reasons given by the applicant.

To buttress his submission counsel for the applicant Mr. Omary Khatibu Salehe referred this court to section 56 (1) of the Labour Court Rules, 2007 (G.N. No. 106 of 2007) which provides thus:-

**56 – (1) The court may extend or abridge any period prescribed by the Rules on application and on good cause shown unless the court is precluded from doing so by any written law.**

Having cited section 56(1) of the Labour Court Rules (supra) Mr. Omary Khatibu Salehe humbly submitted that, the application for review could have been determined at the earliest time ever since when the applicant filed the application, but due to the reasons that the court have been in criminal session and other administrative issues which led the matter to be adjourned several times, the applicant is still having interest to pursue his right of review with regard to the ruling delivered by the court on 15/04/2019.

Having so submitted the learned counsel for the applicant prayed the court to review the ruling of 15/4/2019.

In reply to the applicant's submission, Mr. Iman Mwiga counsel for the respondent challenged both the affidavit and the submission thereof to have totally failed to show good and sufficient cause which prevented him to file the application within a time limit provided for under Rule 56 (a) of the Labour Court Rules GN. No. 106 of 2007 provided (supra)

To back up his argument, he cited many authorities for delay and one of them being the case of **Said Ramadhani v/s Ceita Gold mining** Misc. Labour Rev. No. 29 of 2013 (unreported) Hon. R.M. Rweyemanu ,J at page 6 of the typed judgment where the Hon. Judge held thus:-

**"Delay was on the main due to lack of diligence evidence by the fact that the applicant has made a mistake on procedure twice I agree that was inexcusable again that the applicant was represented in the end result of all above I find the application unmerited and I dismiss it"**

That, the respondent's instant ought to have been made within 15 days pursuant to the provisions of Rule 27 GN. No. 106 of 2007 and so far as the ruling sought for review was delivered on 15/4/2019, then thereafter a lapse of 7 days the delay therefore was inordinate.

As I have seen above, all the authorities cited by counsel for the respondent are dealing with the ward "delay" which is the subject matter in

this application. On that regard, I deem it not proper to deal with all of them as by so doing it amount to abuse the time of the court by dealing with a ward delay.

The issue to be raised for consideration and determination in this application is whether the causes of delay given by applicant are sufficient and reasonable.

It is not disputed in this application, that, the applicant has filed this application for extension of time within which the applicant to file an application for review against the ruling of this court delivered on 15/04/2019.

At law, it is cardinal principle 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.

What constitutes good or sufficient reasons for delay has been laid down in the case of **General Manager Tanroads Kagera v/s Ruaha Concrete company Ltd** Civil Application No. 96 of 2002 CAT – DSM Registry (unreported) in which the Court of Appeal of Tanzania held this:-

**“What constitutes “sufficient reasons” cannot be laid down by any hard and fast rule. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which move the**

**court to exercise its judicial discretion in order to extend the time limited by the rule”**

I have carefully gone through the applicant’s written submission as well as his sworn affidavit but have found no good or sufficient cause which can move the court to exercise its judicial discretion in order to extend the time ;limited by rules.

The purported good and sufficient cause is found at the appellant’s submission at page 21 the last but one paragraph where the applicant submitted thus:-

**“It is our humble submission that, the application for review could have been determined but due to the reasons that the court have been in criminal session and other administrative issues which lead the matter to be adjourned several times. The application is still having interest to pursue his right of review with regards to the ruling delivered by the court on 15/04/2019.”**

That, purported good or sufficient cause that the application was dismissed because the court was in criminal session and other administrative issues is a farce of no baking at law.

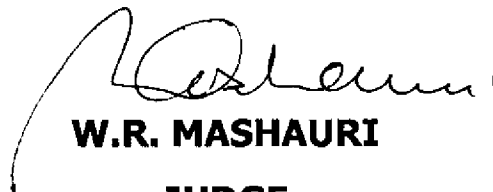
In law, a case filed in court cannot be struck out or dismissed because the court is in session or other administrative issues. When the trial court is in criminal sessions, never go together with matters other than

- criminal session. Other matters than criminal session not in session are adjourned pending trial and finishing of the period set for criminal session. And the court cannot a day dismiss a case because of other court administrative issue.

To grant such an application under the purported given good or sufficient cause would be a mockery of justice and would bring the process of the law in contempt and reduce.

On the bases of all said and done I do hereby dismiss the applicant's application.

No order as to costs is made.

A handwritten signature in black ink, which appears to read 'W.R. Mashauri', is written over the typed name.

**W.R. MASHAURI**

**JUDGE**

**21/05/2020**