

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)  
AT DODOMA**

**MISC. LABOUR APPLICATION NO. 27 OF 2021**

**JOYCE NDAIGA..... APPLICANT**

**VERSUS**

**NATIONAL BANK OF COMMERCE.....RESPONDENT**

*13/12/2021 & 21/12/2021*

**RULING**

**MASAJU, J**

The Applicant, Joyce Ndaiga, by way Chamber Summons Application made under Rule 24(1) (2) (a) (b) (c) (d) (e) (f), and (3) (a) (b) (c) (d), and Rule 56(1) and (3) of the Labour Court Rules, GN No. 106 of 2007 applies to the Court for orders: That this court be pleased to extend time upon which she can file Application for restoration out of time for the Court to restore the Revision Application No.9 of 2018 (originating from an Award in Labour Dispute No. CMA/SGD/60/217) dismissed on the 22<sup>nd</sup> day of February, 2021 for want of prosecution. The Application is being supported by the Affidavit sworn by the Applicant herself. The Affidavit gives the background and the reasons for the Application and for the delay in filing the Application for restoration of the dismissed Application for Revision in time, particularly in paragraphs 1-12 of the Affidavit.

The Respondent, National Bank of Commerce Ltd, contests the Application. There is a counter Affidavit sworn by Joyce Mbogo to that effect. In the said counter Affidavit the Respondent takes issues with the Applicant's averments in the Affidavit stating in paragraph 7 of the Counter Affidavit that the Applicant has failed to account for delays and that the Application lacks merit. There is an Affidavit to that effect.

When the Application was heard in the Court on the 13<sup>th</sup> day of December, 2021, the Applicant was represented by Mr. Jamal Ngowo (TUICO). Ms. Wivina Karoli, the learned counsel, appeared for the Respondent. The parties adopted their pleadings namely the Affidavit, Reply to Counter Affidavit and Counter Affidavit to form part of their submissions in support of, and against the Application. They argued for and against the Application alongside the said pleadings. The parties also cited certain decisions in support of their divergent positions on the Application. The Applicant cited **Hamis Mohamed** (as Administrator of the estate of the late **RISASI NGawe**) **V Mtumwa Moshi** (as administratrix of the estate of the late **MOSHI ABDALLAH**) (CAT) Civil Application No. 407/17 of 2017, Dar es Salaam Registry, **Benedict Mumello V Bank of Tanzania** (CAT) Civil Appeal No. 12 of 2002, Dar es Salaam Registry, **Beatus Laurent Ndiaye V. Mariam Kitoelo** (HC) Civil Application No. 6 of 2021, Mwanza Registry, **African Banking Corporation (Tanzania) Ltd V. Betty Kahumba** (HC) Civil Appeal No. 221 of 2019, Dar es Salaam Registry, **Elias Kayala V. Just Rent Car Ltd** (HC-Labor Division), Revision No. 377 of 2019, Dar es Salaam Registry, **Monica Nyamakare Jigaba V. Mugeta Bwire Bhakome** (as administrator of the estate of **MUSIBA RENI JIGABHA & HAWA SALUM MENGELE**) (CAT) Civil application No. 487/01 of 2018, Dar es Salaam Registry, **CRDB Insurance Brokers Ltd V. Britam Insurance**

**(Tanzania) Ltd & Abillahi Kassimu Mandepe** (HC) Misc. Civil Application No.. 29 of 2020, Mtwara Registry, **Orestus Leonard Ndimbo V Sunshine Industrial Co. Ltd** (HC), Misc. Labour Application No. 23 of 2020, Dodoma Registry and **Amina Ramadha V. Hawa Hamisi & 3 others** (HC) Land Appeal No. 13 of 2018, Tabora, Registry. The Respondent cited **David Bungu V. National Bank of Commerce Ltd** (HC Labour Division) Misc. Application No. 307 of 2020, Dar es Salaam Registry for and against the Application.

The Applicant prayed the Court to grant the Application whilst the Respondent prayed the Court to dismiss the Application for want of merit.

The law is categorically clear in rule 56(1) of the Labour Court Rules, 2007 that the Court may extend or bridge 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.

So far, there is no law that prevents the Court from considering applications of this nature. Indeed, it is provided for in Rule 55(2) of the Labour Rules, 2007 that in the exercise and performance of its powers and functions, or in any incidental matter, the court may act in a manner that it considers expedient in the circumstances, to achieve the objects of the Employment and Labour Relations Act [Cap 366] and, or the good ends of justice.

That being the case, in considering the Application of this nature in terms of the enabling provisions of the law applicable, the Court would normally consider the evidence adduced for, and against the Application in the Affidavit and Counter Affidavits and make decision accordingly, not necessarily relying on the legal arguments made by the parties.

Rule 56(1) (3) and 55(2) of the Labour Court Rules, 2007 were intended for facilitation and realization of the guidance in Article 13(2) (6) (a) of the Constitution of the United Republic of Tanzania, 1977 [2005 Edition] on the right to be heard, appeal and other legal remedies against the decision of the court or tribunal.

The court has been impressed by the reasons deposed by the Applicant in paragraphs 1-12 of the Affidavit in support of the Application and taking into account the fact that the Application for Revision No. 9 of 2018 which were dismissed for want of prosecution had been filed in the Court in time, the Court is inclined to grant the Application despite of the Respondent's opposition in the counter Affidavit. That said, the Applicant's averments in paragraphs 14-17 of the Affidavit, can only be considered by the court judicially when her Application, if any, for restoration of the dismissed Application for Revision No. 9 of 2018 succeeds. So, the parties armaments and legal arguments have made prematurely and the Court hereby declines to make its position known to the parties on this Application but at the opportune time if the intended Application, if any, for Restoration of the Revision No. 9 of 2018 succeeds.

In **Orestus Leonard Ndimbo V. Sunshine Industrial Co. Ltd** (HC) Misc. Labour Application No. 23 of 2020, Dodoma Registry, the Court held that a person who in good faith, diligently and timely pursues his legal remedy in court but in the course of so doing makes a curable mistake, such person should not be condemned to forfeit his right to be heard on the remedy he seeks even in the extended time pursuant to the procedural law thereof.

The Court is of the considered position that good cause has been shown by the Applicant in paragraphs 9-12 of the Affidavit.

With this in mind, since the Applicant has so rightly moved the Court in accordance with the relevant procedural law as per enabling provisions cited in the Chamber Summons for the application to extend time to file Application for Restoration to the Court the Application for Revision No. 9 of 2018 which had been dismissed for want of prosecution, the Application is hereby granted accordingly under Rule 56(1) of the Labour Court Rules 2007.

The intended Application, if any, shall be filed in the Court within the time prescribed by law for filing such Application in the Court.

The parties shall bear their own costs accordingly.



  
GEORGE M. MASAJU

**JUDGE**

21/12/2021