

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI
MISC. LABOUR APPLICATION NO. 17 OF 2021**

*(Originating from Application for Revision No. 5/2021 & Labour Revision No. 28/2020
High Court Moshi & Labour Dispute No. CMA/KLM/MOS/ARB/58/2019)*

PETRO MPINGA SHALUA 1ST APPLICANT
RASHID HUSSEIN BWATO 2ND APPLICANT
ADINANI MALEVO MSUYA 3RD APPLICANT
PELAGIA KASUMBAI KWAY 4TH APPLICANT
EDWIN ELIABU MAKAME 5TH APPLICANT
STEPHANO SHEMDOE MDOE 6TH APPLICANT
ELIUTHER JOSEPH MACHA 7TH APPLICANT
ANTIPAS SIMPLISI SHAYO 8TH APPLICANT
EMMANUEL AKWILINI MATAKA 9TH APPLICANT
BARBARA JOSEPH KOMU 10TH APPLICANT
ELINIMFOO EZEKIEL MUNUO 11TH APPLICANT
MSIFUNI SHEDRACK MGONJA 12TH APPLICANT
GODFREY MELKIORY MUSHI 13TH APPLICANT
PAUL MHUMBA 14TH APPLICANT
RUTH D. KIWELU 15TH APPLICANT

Versus

**GENERAL SECRETARY GOOD SAMARITAN FOUNDATION AND
MANAGING DIRECTOR KILIMANJARO CHRISTIAN
MEDICAL CENTRE RESPONDENT**

Last Order: 19/5/2022
Date of Ruling: 22/6/2022

RULING

MWENEMPAZI, J:

The applicants herein named have made this application for extension of time to enable them file fresh application for review arising from the Judgment in Labour Revision No. 28 of 2020 delivered on the 8th March, 2021. They are also praying for any order the court may deem it fit to grant. The application is made under the provisions of Rule 24(1), (2) (a) (b) (c) (d) (e) and (f) and Rule 24(3) (a) (b) (c) (d) and Rule 56(1) (2) and (3) of the Labour Court Rules, 2007, GN No. 106 of 2007 and any other enabling provisions of law.

The application is supported by an affidavit affirmed by Ms. Zuhura Twalib, who is an advocate representing the applicants. In it she has stated that earlier on after a judgment of the court in Labour Revision No. 28 of 2020 was delivered on the 8th March, 2021, they filed a memorandum of review which was registered as application for Review No. 5 of 2021. It was unfortunate that the application was out of time and therefore it was struck out.

According to paragraphs 6,7,8,9 and 10 the delay was due to technical reasons as the application for review was filed on time; it was filed on the 13th April, 2021. However, upon follow-up, the e-filed documents could not be traced online until on the 7th May 2021 when the documents were retrieved and were seen online again, with endorsement proving the

allegations made, that the application was filed on time on the 13th April, 2021 at 17:11:44. Simply explained, it was impossible to file a hard copy due to disappearance of the documents in the system.

The Respondent is opposing the application and has filed a counter affidavit deponed by Stephen E. Kolimba.

At the hearing, parties were represented by Ms. Zuhura Twalib, learned advocate for the applicant and Ms. Rachel Mboya, Advocate for Respondent. Parties were granted leave to submit by way of written submission by order dated 24th February, 2022.

The counsel for the applicants has submitted that, immediately they had a copy of judgment, they filed a memorandum of review on the 13th April, 2021 which was registered as Application for Review No. 5 of 2021; however an objection was raised which led to the same being struck out as being filed out of time. Once it was struck out, they spent substantial time looking for copies of Ruling and drawn order of application for review No. 5 of 2021. They could not obtain the same on time until on 13th December, 2021. The applicant has supported the averment with a copy of letter requesting for the same as annexure KM6.

In their view they did act diligently, without any sloppiness in pursuing and prosecuting their rights after the application was struck out by this very court. The applicants pray that the application be granted. The counsel has cited the case of **Dr. Fourtunatus Masha vs Dr. William Shija and Another [1997] TLR 41** to support the application by arguing that the

delay in this case is a technical delay as the original application was filed in time but found to be time barred due to technical reasons.

On the issue of illegality, the counsel has submitted that the impugned Ruling and Order in Application No. 28 of 2020 is tainted with illegality. The court decided to deal with claims of 13 Applicants and left 2 other applicants aside and failed to consider the CMA record which show that the dispute was referred at CMA as two separate labour disputes of the same nature. One dispute had 13 applicants and second dispute had two applicants and later were consolidated under the law as one dispute. Hence, the dispute had fifteen (15) applicants. Taking only 13 applicants has caused injustice. The counsel has urged this court to grant an application on the ground relying on the case of ***Principal Secretary, Ministry of Defence & National Service vs DPP Valambia [1992] TLR 185, VIP Engineering and Marketing Limited and 2 others versus Citi bank Tanzania Limited, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported)***. In the latter case it was held that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time. The counsel prayed that this application be granted.

The Respondent in reply prayed first that the counter affidavit be adopted to form part of the submission. Then, the respondent's counsel submitted that the applicant has failed to show reasonable ground for extension of time to file their application.

The counsel for respondent has submitted that the applicants have no good cause to file the application out of time and cannot rely on

technicality. It is well known that the application lodged in court must be signed by a party and then encounter other process of registration. The applicant's affidavit show that the application was signed on 29th April, 2021 and filed in court on 7th May, 2021.

Rule 27 sub rule 1 of the **Labour Court Rules, G.N. No. 106 of 2007** provides that:

"Any review shall be instituted by filling a written notice of review to the Registrar within 15 days from the date of the decision to be reviewed was delivered".

The Respondent has argued that the applicant has failed to demonstrate good cause and in support of the argument she has cited the case of **Boaz Mwaifwisi Mwakifumbwa vs Bertha Jones Maro, Misc. Civil Application No. 26 of 2019**, at page 11 where it was observed that: -

"The applicant failed to illustrate good cause that would entitle him extension of time sought".

In the opinion of the respondent, the applicants delayed due to their negligence and failed to file application within time as provided by the law. The reasons advanced did not suffice to move this honourable court to award them extension of time. The respondent has cited the case of **Deodatus Ndaji versus NAFRAC, High Court Labour Revision No. 22 of 2013, Shinyanga** wherein it was held that: -

"The question of limitation of time is fundamental issue involving jurisdiction...it goes to the very root of dealing with civil claims.

Limitation is the matter of a material point in the speedy administration of Justice. Limitation is there to ensure that a party does not come to court as and when he chooses."

Generally, the counsel for the respondent has the opinion that the applicants have failed to show a good cause for the court to exercise its discretion. The counsel prayed that the application be dismissed.

I have read the application and also submissions made by the parties. In my understanding the delay must be explained and or accounted for each day of delay. The applicant explains the delay in two ways. **First**, the initial filing which made this case to delay was due to the fact that the documents disappeared virtually only to be retrieved on the 7th May 2021. That made it difficult to file a hard copy on time hence delay. **Second**, delay after striking out the application for review and subsequent filing of the present application which was caused by delay in obtaining copies of Ruling and drawn order of the ruling in Application for Review No. 5 of 2021.

In my reading I find indeed there was filing of the application for review on the 13/4/2021. However, the notice of review made under Rule 27(1) of the Labour Courts Rules, GN. 106 of 2007 is shown to have been filed on 7th May, 2021 which is far after prescribed time. It is affirmed to be out of time due to the date of signing which is shown to be 29th April, 2021. By any means, one has to explain the allegations that it was filed on 13th April, 2021 within time and the documents got lost virtually but later retrieved

hence hard document filed on the 7th May, 2021. In this case, time awaiting to obtain copies of Judgement and decree being excluded.

Again, after the striking out of the application for review on 20th October, 2021 the applicants allege, they were not supplied with the copies of ruling and drawn order on time. Hence, they had to delay filing this application, which it is shown to have been filed on the 13th December, 2021.

It is plain clear that on 21st October, 2021, the applicants filed a letter requesting to be supplied with the documents, a copy of ruling and drawn order for an Application for Review No. 5 of 2021. They allege that they made follow up and could not be supplied with the said documents until sometime on December, 2021. However, the record shows the documents were issued to the respondents on 15th November, 2021. That means they were ready for collection before even that day. By practice, I believe they were ready by 5th November, 2021. The reason is simple, that date is the deadline the documents must be uploaded on the Judiciary database for decisions of the previous month for every month. It is thus unpalatable to hear the applicants were not supplied on time.

Assuming the allegations are true, that the documents were not supplied on time, how then was it possible for the respondents to have them on 15th November, 2021? That would mean, the applicants never made follow up as alleged. They wrote a letter and sat down to wait for somebody to collect for them.

In my opinion the delay shows to be due to negligence and not technical as alleged. The reasons are clear; discrepancy in the documents filed for review as analyzed above and sloppiness in follow up of the copies.

If we turn to the ground on illegality, the law supports extension of time if there is illegality on the record. However, the number of applicants as such does not validate the claims. I would find it compelling if there was something to do with proof of claims which has inadvertently disregarded. That is backed by the record, judgment in Labour Revision No. 28 of 2020. In it the applicants lost not because of their number but due to failure to prove a claim. Even if I assume their number was 15 as submitted still if no proof of the claims is availed to the court, they will lose. That brings me to the argument that illegality, if at all has to be used as the ground, then it should not be established through a long process of analysis. It has to be on the face of record.

Under the circumstances, I find the applicants have failed to show good cause and or sufficient reasons for the court to exercise its discretion to enlarge time. The application therefore is dismissed. No order as to costs.

It is ordered accordingly.

Dated and delivered at Moshi this 22nd day of June, 2022.



T. M. MWENEMPAZI
JUDGE

Ruling delivered this 22nd day of June 2022 in the presence of the applicants and Miss Zuhura Twalib Advocate for the applicants and Rachel Mboya, Advocate for the Respondent.



T. M. Mwenempazi

**T. M. MWENEMPAZI
JUDGE**