

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**LABOUR APPLICATION NO. 1 OF 2022**

*(Arising from Labour Revision No. 31 of 2021 High Court Moshi)*

**F.M. FOUNDATION PRE-PRIMARY SCHOOL ..... APPLICANT**

**VERSUS**

**GOODNESS T. KITAA ..... 1<sup>ST</sup> RESPONDENT**

**WAREKE S. MWAIHOHYO ..... 2<sup>ND</sup> RESPONDENT**

***7/6/2022 & 1/7/2022***

**RULING**

**MWENEMPAZI, J.**

The applicant is praying for an order of this court to extend time within which she will be able to lodge her notice of review so as this court may review the proceedings, judgment and decree from Labour Revision No. 31 of 2021 and also she is praying for any order of the court, that the court may be pleased to grant as shall deem it fit and just to grant.

The application is supported by an affidavit sworn by Faustus Clemence Lukunga who is a Managing Director of the Applicant school. In it the deponent has stated that in the application for revision No. 31 of 2021, the applicant prayed, among other prayers, for voidability of the contract



between the applicant and the Respondent herein. In the judgment delivered on the 25<sup>th</sup> November, 2021, this court omitted to adjudge upon the issue of voidability of the contract. The deponent has also deposed that the judgment contains reliefs which were not granted by the Commission for mediation and arbitration of Moshi in Labour Dispute No. CMA/KLM/MOS/ARB/25/2021. She is thus praying this application be granted and that will accord all parties the rightful rights upon their claims and the records of this Honourable court will be rectified.

The cause of delay to file this application is stated by the deponent in paragraph 12 of the affidavit, to be the late issuance of the copy of decree and judgment to be reviewed and that it was a Christmas season break. According to the affidavit the documents were issued to the applicant's advocate on the 23<sup>rd</sup> December, 2021.

The Respondents are opposing the application and have sworn a joint affidavit in which they are faulting the application that it has been made in the same court instead of taking it to the superior court.

At the hearing the applicant was represented by Ms. Magdalena Kaaya, learned advocate and the respondents were being served by Mr. Batista Kiteve, their personal representative.

Basically the counsel for the applicant has reiterated the contents of the affidavit and expanded further that the delay was not caused by negligence or inordinate actions.



The counsel further has argued that since the judgment granted reliefs which were not pleaded then, the issue of illegality crops up. Under the circumstances she prayed that this court grants the application by referring to the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christians Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal of Tanzania, at Arusha.**

The counsel submitted in applying the principles in that case to the present situation that the applicant made application immediately after making opinion she has been aggrieved. She made follow up of the copies of the judgment, decree and proceedings promptly. After obtaining the said documents on 23<sup>rd</sup> December, 2021, she sought services of an advocate, however he was on vacation until after New Year when the advocate returned and started to work on the documents. The delay was not due to inaction or negligence.

In reply the Personal representative for the Respondents, Mr. Batista Kiteve submitted that the applicant delayed to make follow up and this application was lodged after the respondent had applied for execution. In the opinion of the respondent, the applicant had enough time to make an application on time. The respondent thus prayed this court to dismiss the application.

In rejoinder, the counsel for the respondents submitted that it is not true that this application was made after the respondents had made an application for execution. The application for execution was made on 13/8/2021 and the application for revision was made on the 2<sup>nd</sup> August



2021 and the copies for this application were supplied on 23/12/2021. Thus, she prayed for this application to be granted.

I have read the record of the court as well as heard the applicant and the respondents. In the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christians Association of Tanzania (supra)** it was held that:-

*"As a matter of general principle, it is in the discretion of the court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On authorities however, the following guidelines may be formulated:-*

- a) The applicant must account for all the period of delay.*
- b) The delay should not be inordinate*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*



In this case the applicant has stated in the affidavit as well as in submission the reasons for delay and what she intends to achieve in case this application will be granted; without repeating in detail, the applicant allege delay in issuance of the copies of judgment, decree and proceedings and the seasonal break (Christmas) as the reasons for delay.

The Respondents however, stated in the affidavit in reply (counter affidavit) that they are opposing the application, that the decision in this court was in their favour, the applicant cannot come and lodge the application in the same court; she should apply in the higher court.

However during submission the Personal representative of the respondents raised an issue of inordinate action and or sloppiness in follow up. I think that was not according to the principles laid down in the case of **The Registered Trustees of the Archdiocese of Dar es Salaam versus The Chairman Bunju Village Government & 4 Others**, Civil Appeal No. 147 of 2006, CAT at Dar es Salaam where it was held that:

*"The reasons of failure to appeal on time must be given on an affidavit not on submission because submissions are not evidence."*

I have the opinion the applicant has advanced sufficient reasons for delay and well according to the required procedure. The respondents seem not to have clear line of defence. At first, they thought it was unfair for this application to be lodged in this court. But in my understanding a review is filed in the court which made the decision.



Since this intended act is not an appeal, this application is proper, given the laws cited as enabling provisions as well as the substance.

On the substance of the application, the applicant has availed the court with material enough to exercise its discretion to extend time to file review. There are sufficient reasons for extension of time.

Under the circumstances this application has merit is therefore granted. The applicant should file the application within fifteen days (15) from the date of this decision.

It is ordered accordingly.

Dated and delivered at Moshi this 1<sup>ST</sup> day of JULY, 2022



A handwritten signature in black ink, appearing to read "T. M. Mwenempazi".

**T. M. MWENEMPAZI**  
**JUDGE**

Ruling delivered in court in the presence of the applicant's counsel, Ms. Magdalena Kaaya and the respondents in person.

A handwritten signature in black ink, appearing to read "T. M. Mwenempazi".

**T. M. MWENEMPAZI**  
**JUDGE**