

**IN THE HIGH COURT OF TANZANIA  
DISTRICT REGISTRY OF DAR ES SALAAM  
AT DAR ES SALAAM  
MISC. CIVIL APPLICATION NO. 647 OF 2020**

**NTINABO RWE GASIRA.....APPLICANT**

***VERSUS***

**CARNAUD METAL BOX LIMITED Presently**

**Known as NAMPACK TANZANIA**

**LIMITED.....RESPONDENT**

*Date of Last Order: 30/06/2021*

*Date of Ruling: 01/04/2022*

**R U L I N G**

**MGONYA, J.**

The Applicant herein made this Application under **section 14 (1) of the Law of Limitation Cap. 89 [R.E. 2019]**. The Applicant's application is supported by an affidavit sworn by the Applicant himself, seeking for the following orders:

***(a) The applicant be granted extension of time to apply for review of the order of this Court dated 25<sup>th</sup> August 2016;***

***(b) Costs of and incidental to this, application  
abide by the results of the intended application  
for review; and***

***(c) Incidental orders as may be necessarily  
made.***

The Respondent filed a Counter Affidavit challenging the Application filed before this Court. In hearing, the Applicant was represented by **Mr. Robert Rutaihwa** Learned Advocate while the Respondent was represented by **Mr. Zacharia Daudi** learned Advocate. The matter was disposed of by way of written submissions as prayed by Counsel for the parties to this application.

Having ventured through the pleadings and submissions of the parties of which I intend not to reproduce but will take consideration of each. It is from here I proceed in determining the Application for extension of time as by the Applicant with the reasons set forth by the Applicant.

In reference to the Affidavit as attached to the Application, the applicant states that there was a matter before the Court (**Civil Case No. 303 of 1998**) of which was heard and determined in his favor. The Respondent not being satisfied appealed to the Court of Appeal where the appeal was struck out for being incompetent

since the Judgement in the records of the Court of Appeal was not signed by the presiding Judge.

Moreover, with the reason for the appeal being struck out at the Court of Appeal, the applicant states that there was no proper decree that he would have used for his application for execution so as to get the fruits of the judgement.

With regards to the contents of paragraph **6,7,8** and **9** of the applicant's affidavit, the Applicant avers that there were various steps taken to rectify an error that was noted but the same was in vain and thus the same demonstrate and advocate for reasons of his delay.

The Respondent in the Counter affidavit disputed the contention by the applicant by stating that the steps taken were cured by the decision of Honourable Mruke, J. The contention that the said decision also has an error is not justified since the error was rectified by Hon. Mruke; whereas it was ordered that the judgment adopt the date of the decree a position that the applicant states to be an error.

In the Respondent's submission the Respondent averred that there is no error as alleged by the Applicant in the decision of Hon. Mruke J in **Miscellaneous Cause No. 524 of 2016**. In Civil **Case No. 104 of 2007**, the Court of Appeal clearly observed in a



circumstances where the judgement is not dated and signed then the date of the judgement should make reference to the date on which the decree was extracted because the judgement of Ihema J. was not signed. The afore position was followed by Hon. Mruke J. in **Civil Cause No. 524 of 2016** was called to rectify the date of decree in **Civil Case No. 303 of 1998**. The Respondent averred that, this does not amount to an error manifest on decision of Mruke J, hence not good cause for extension of time.

From an application like this one before the Court, an extension of time is basically on the discretion of the Court. The same is established by the jurisprudence of our jurisdiction that it is required to be judiciously exercised. It is also of utmost importance to weigh if the Applicant's ground is of "good cause" to secure the extension of time. In the Case of **BENEDICT MUMELLO VS. BANK OF TANZANIA, CIVIL APPEAL NO. 12 OF 2012** the court held that inter alia;

***"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."***

From the application before this Court the Applicant states that after the matter was struck at the Court of Appeal with reason of the defect identified in the judgement, the Applicant was not reluctant and took steps to rectify the defect by filing an application with the Court to rectify the defect. The matter was determined and yet still on filing an application for execution another defect was noted and I was advised that the decree I had was not extracted from the judgement as required.

From the records before me I find that the Applicant has been within the business of the Court and has stated on the series of events on the follow ups made to correct the defect in **Misc. Civil Cause No. 524 of 2016** for matters of justice so as to enable the Applicant to file for a Review the said decision so as to have a proper Judgment and Decree.

Having said that I find that the reason for delay was not the fault or intentional cause of the Applicant but was misled by the Court, I find it unjust to punish the Applicant for a fault caused by the Court that pronounced the Judgment. Therefore, **the application of extension of time is accordingly granted as prayed.** The Applicant is ordered to file his review within **twenty one days (21)** from the date of receiving this ruling.

Each party to bare their own costs.

It is so ordered.



  
**L. E. MGONYA**  
**JUDGE**  
**25/03/2022**

**COURT:** Ruling delivered in chamber in presence of Mr. Zake and Mr. Laurent Leonard, Advocates for the parties and Richard – RMA.



  
**L. E. MGONYA**  
**JUDGE**  
**25/03/2022**

ORIGINAL