

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 235 OF 2017**

**KARIM HASSAN.....APPLICANT**

**VERSUS**

**NATIONAL MICROFINANCE BANK PLC.....RESPONDENT**

**RULING**

*Date of Last Order: 1/03/2018*

*Date of Ruling: 23/05/2018*

**L.L.Mashaka, J.**

This is a ruling in respect of the application for extension of time filed by the applicant Karim Hassan to file an application for review of the decision and decree of this Court in Revision No. 503 of 2015 between the same parties, out of time.

During the hearing, the applicant was represented by Mr. Isaac Tasinga, Advocate and Mr. Pascal Kamala, Advocate assisted by Ms. Esther Msangi, Advocate represented the respondent.

It was submitted that the application was preferred to this Court by chamber application under Rule 24(1)(2)(a)(b)(c)(d)(e)(f)(3)(a)(b)(c)(d), Rule 56(1)& (2) of the Labour Court Rules, GN No. 106 of 2007, the main prayer for the Court to extend time so that it can review its decision and decree.

The application was supported by affidavit deponed by Learned Counsel for the applicant and prayed the same to be adopted to support prayers in chamber summons.

Learned Counsel prayed to refer the Court to paragraph 5 of affidavit where the main issue was the ruling of Hon.Arbitrator that the applicant was not entitled to anything an issue which aggrieved the applicant as he was entitled to terminal benefits. That according to the judgment, it held that the applicant was entitled to the terminal benefits and follow up to his employer. Just after the judgment and decree in Revision No. 503 of 2017, the applicant decided to make follow up by writing a letter but the employer gave no cooperation. He submitted further that was the reason they filed this application for extension of time. That while the applicant was making such follow up to the respondent employer, he was delayed to file the application.

That he was required to file the review within 30 days after receiving the judgment and decree in Revision No. 503 of 2007.

In reply, Learned Counsel for the respondent prayed to adopt counter affidavit deponed by one Lilian Komwihangiro to form part of his submission. That the extension of time is a discretionary leave issued by the Court upon the applicant demonstrating sufficient reasons why an application was not made within prescribed time. That the applicant in this case was supposed to demonstrate to the Court through an affidavit why an application was not made within the prescribed time.

Learned Counsel further argued that the judgment sought to be reviewed was issued on the 07<sup>th</sup> December 2016 and an application for

extension of time was filed on the 20/07/2017. That the only reason which the applicant has given in the affidavit is that the applicant was making follow up of the benefits to the respondent. That there is no any evidence to show that the applicant ever made any follow-up and there is no evidence to show that the respondent ever received those complaints from the applicant following up his benefits.

Learned Counsel submitted that it is a settled principle that the applicant has to account for every day of delay from the date when the time expired until when the application for extension of time was filed. That the said principle is from the decision of the Court of Appeal of Tanzania in Civil Application. No. 4 of 2014 between **Sebastian Ndaula Vs. Grace Rwamafa**, Court of Appeal of Tanzania at Bukoba (unreported) at page 8, paragraph 1, also adopted in a recent case of the Court of Appeal of Tanzania, Civil Application. No. 107 of 2017, between **Vodacom Foundation Vs. Commissioner General TRA**, Court of Appeal of Tanzania at Dar es Salaam (unreported) at page 9, paragraph 2. That in the present case the applicant has not demonstrated when exactly he started making follow ups to the respondent.

Learned Counsel insisted that, there is no indication when exactly the respondent refused to heed to the applicant's demands. That absence of those exact dates makes it difficult for this Hon. Court to make a finding which period of time to be extend. That there is no any benchmark of counting the dates when the application was due for filing, and when the application for extension of time was made. Learned Counsel argued that the entire period from January 2017 when the application was due for filing and until July 2017 when this application was made, that entire period is

unaccounted for. That the application has not demonstrated sufficient reasons as required by the law and prayed that the application be dismissed.

In rejoinder, Learned Counsel for the applicant admitted that there is no evidence of such follow ups though the follow –ups were made and denied by the employer.

That on the cases cited by Learned Counsel for the respondent the decisions concern the interpretation of Court of Appeal of Tanzania Rules confined to the Court of Appeal of Tanzania only. That this Court is bound by its rules under GN No. 106 of 2007 and the Court of Appeal of Tanzania decision is binding but not applicable to this Court.

Having heard submissions by both parties, the issue for determination is whether or not the applicant has adduced sufficient or good reasons for extension of time as per Rule 56(1) of the Labour Court Rules GN 106/2007, which calls for the same. The applicant's reasons for delay was that he was still following his claims to the respondent employer. However that argument was promulgated not to be a reason for extension of time.

Rule 56(1) of the Labour Court Rules, GN No. 106 of 2007 provides 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.

In the case of **Consolidated Holding Corporation Vs Rajani Industries Ltd and BOT**, Civil Appeal No. 2 of 2003, CAT at Dar Es Salaam, Lubuva, Mrosso and Msoffe, JJA held that:

*"the parties had a conduct ,consent to wave the statutory period of limitation, it was argued. We need not to be delayed in this aspect, the applicable legal position is crystal clear. It is common ground that the time within which rights may be enforceable being fixed by statutes, it is not open to parties by agreement to alter such time or to waive and contract themselves out of the operation of the statute.." quoting K.J. Rustomy, The Law of Limitation 5<sup>th</sup> Ed Vol. 1 at page 23 that.. " the statute is not defeated or its operation retarded by negotiation for settlement between parties.."*

Also in the case of **Rutunda Masore Vs. Moraf Ltd**, Revision No. 7 of 2014, HCLD at Mwanza [2015]LCCD at p. 33 quoting the case of **Said Ramadhani Vs Geita Gold Mining Ltd**, Misc Application No. 29/2013[unreported] the Court held that, *"in deciding the aspect of extension of time the applicant is expected to account cause for delay of every day that passes beyond the prescribed period"*.

The applicant has failed to account for each day of the delay in this application for extension of time.

The applicant had to timely file the application for review within the prescribed time. In the case of **Vodacom Foundation Vs Commissioner General(TRA)**, Civil Application No. 107/20 of 2017,Court of Appeal of Tanzania at Dar Es Salaam [unreported], His Lordship Mwambegele,JA at page 10, quoting the case of **Dr. Ally Shabhay Vs. Tanga Bohora Jamaat** [1997] TLR 305 at page 306,the Court stated that *"those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence"*.

This Court finds the applicant has failed to meet the requirements of the law for this Court to grant extension of time to file an application for review out of the prescribed time. This application is dismissed for lack of merit.

It is so ordered.



L.L. Mashaka

**JUDGE**

23/05/2018