

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

**AT DAR ES SALAAM**

**REVISION NO. 459 OF 2019**

**KHATIBU MWINYI AND ANOTHER ..... APPLICANTS**

**VERSUS**

**LIBERTY INDUSTRIES (T) LTD. .... RESPONDENT**

**RULING**

*Date of last Order: 23/04/2020*

*Date of Ruling: 10/06/2020*

**Z.G.Muruke, J**

On 30<sup>th</sup> April 2019, this court struck out applicants revision number 325/2019 with leave to file competent application within 14 days. The order followed concession by applicant counsel on preliminary objection raised by respondent counsel. Present revision was filed on 15<sup>th</sup> May, 2019. Respondent raised preliminary objection that revision application has been filed out of time ordered by the court.

Mr. Ladislaus Michael submitted in support of the preliminary objection that applicant filed revision number 459/2019 on 15<sup>th</sup> May 2019, after expiry of 14 days by one day, contrary to the court order dated 30<sup>th</sup> April, 2019. The delay even of one day is fatal in terms of decision of Court of Appeal of **Juma Mtungirehe Vs. The Board of Trustees Tanganyika National Parks T/A (TANAPA)** Civil Appeal No. 66/2011.

Respondent counsel invited this court to be guided by Section 3(1) of the law of Limitation Act, Cap 89 RE (2002). In short Mr. Ladislaus Michael pressed for dismissal of the revision application.

On the other hand, Tumainiel Lyimo for the applicant argued that, there is no proof of exact time limit for applicant suppose to file revision. Applicant counsel requested respondent to provide proof in terms of Section 110(1)(2), 111,112 of the evidence Act, Cap 6 RE 2002. On further submission, referred this court to Rule 2 of GN 106/2007 together with Section 60(1)(f)(2) of the interpretation of Laws Act, Cap 1 (2002 RE) and schedule of the Public Holidays Act, No. 28 of 1966. In essence, applicant counsel argued that 1<sup>st</sup> May 2019 was Public Holiday, thus, is to be excluded. Once excluded, then revision is not out of time.

This court has careful considered submissions by both parties counsels. There is no dispute that order that granted applicant 14 days leave to file competent application is dated 30<sup>th</sup> April, 2019. Equally no dispute that, current application for revision was filed on 15<sup>th</sup> May, 2019. The issue raised by applicant counsel on proof of time given by the court, is a monkey of justice. The order subject of the application filed was issued by this court in the presence of applicant counsel, and same is part of court records. What proof then? For easy of reference, proceedings of 30<sup>th</sup> April, 2019 is here reproduced.

**Date: 30/04/2019**

Coram: Hon. Z.G. Muruke,J

Applicant:

For Applicant: Tumainiel Lyimo

Respondent:

For Respondent: Absent

CC: Hadija

**Tumaniel Lyimo:** I pray to withdraw the revision with leave to refile within fourteen (14) days from today.

Sgd:  
Z.G.Muruke  
**JUDGE**  
30/04/2019

**Order:** Upon prayer by applicant Counsel, to withdraw the application with leave to refile within 14 days. Revision application number 325/2019 is marked withdrawn with leave to refile within fourteen (14) days from today.

Sgd:  
Z.G.Muruke  
**JUDGE**  
30/04/2019

Looking at the above proceedings, not only order of the court but also applicant prayed for leave to refile revision within 14 days from the date of the order 30<sup>th</sup> April, 2019. Thus 14 days was not prescribed by law, but the court. Assuming for the sake of argument we are to follow applicant argument that according to interpretation of laws Act Cap 1 part

VIII on computation of time in particular Section 60(1) that read as follows;

- (a) Where a period of time is expressed to be at, on, or with a specified day, that day shall be included in the period;
- (b) Where a period of time is expressed to be reckoned from, or after, a specified day that day shall not be included in the period.

Applicable for the case at hand is 6(0)(1)(a). The order says within 14 days meaning that, even 30<sup>th</sup> April is included, counting from 30<sup>th</sup> April to 15<sup>th</sup> May, 2020 is a period of 16 days. Thus delay not for one day but for two days. The order of the court, did not say Public holidays, Saturday and Sunday to be excluded. Court orders has to be complied with, none compliance of court order not only is a disrespect to the court, but create chaos on the entire administration of justice. That should not be left to happen. This court in the case of **Abdulrahaman Kinana Vs. Peter Simon Msingwa** (MP) Civil Case No. 108/2013, Dar es Salaam, District registry (unreported) held that;

There was no compliance of this court order dated 1st December, 2016, not only for defendant or his witnesses by also defendant counsel, who under took to do so as an officer, of the court. Very surprisingly, it is non-compliance of this court order by it's own officer. Court orders should be complied forthwith. None compliance is not only a sign of disrespect, but, create chaos in the entire administration of justice.

It is worth noting that this is the third application filed by the applicant. The first one Revision No. 774/2018, was struck out on

28/03/2019 upon concession by same applicant counsel on preliminary objection raised by the respondent counsel. Proceedings are reproduced for easy of reference.

**Date: 28/03/2019**

Coram: Hon. Z.G. Muruke,J

Applicant:

For Applicant: Tumaini Lyimo (Advocate)

Respondent:

For Respondent: Ladislaus Maiko (Advocate)

CC: Hadija

**Court:** CMA records is yet to be forwarded to this court.

Sgd:  
Z.G.Muruke  
**JUDGE**  
28/03/2019

**Tumaini Lyimo:** I have been served today with the notice of preliminary objection. I concede. Let the application be struck with leave to refile proper application.

Sgd:  
Z.G.Muruke  
**JUDGE**  
28/03/2019

**Ladislaus Maiko:** No objection.

Sgd:  
Z.G.Muruke  
**JUDGE**  
28/03/2019

**Order:** Upon concession by applicant counsel that affidavit in support of the application is defective, Revision Application No. 774/2018 is struck out. For interest of justice applicant is granted fourteen days leave to file proper application.

Sgd:  
Z.G.Muruke  
**JUDGE**  
28/03/2019

Second Revision application number 325/2019 was struck out on 30<sup>th</sup> April, 2019 upon concession by same applicant counsel, who prayed for 14 days leave to refile present revision. So, this is third revision application by applicant. Luckily enough, it is the same advocate that represent applicant and twice asking for time to refile. From the records it is clear that, respondent is prejudiced by the ongoing negligence of applicant's counsel. Therefore, this court should consider clean hand doctrine, that precludes a party who is seeking equitable relief in court from taking advantages of his/her own wrongs. Applicant counsel has filed two defective application that ended upon being struck out with leave to refile. Equally current third revision has been filed out of time. In Misc Labour Application No. 12/2017 case of **Jane Chabruma Vs. NMB PLC** at Morogoro this court held that:-

As has been held time out of numbers, ignorance of law has never featured as a good cause for extension of time. It is worth noting that, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it, for otherwise he/she will have nothing to offer as an excuse for sloppiness.

There is nothing more, a part from going in line with decision of **Paul Regional Bramely Hii Vs. Security Group Cash in Transits (T) Ltd** by Honourable Rweyemamu, J as correctly cited by respondent counsel. Litigation has time frame. Parties cannot decide when to come to court without following limitation of time. Otherwise, we will have an endless litigations at the whims of the parties. Present revision being filed out of time, granted by the court has to be dismissed. Accordingly, revision application No. 459/2019 is dismissed for being filed out of time.



Z.G.Muruke

**JUDGE**

10/06/2020

Ruling delivered in presence of applicant, Tumainiel Lyimo for the applicant and Ladislaus Maiko for the respondent.



Z.G.Muruke

**JUDGE**

10/06/2020