

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 298 OF 2020

BETWEEN

YORDAN JOHIM SANGA APPLICANT

VERSUS

**THE GOVERNING BODY OF
THE COLLEGE OF BUSINESS EDUCATION RESPONDENT**

RULING

Date of Last Order: 22/06/2021

Date of Ruling: 29/06/2021

L.J. Itemba, J.

On 3rd of April 2020, this Court, (Hon I.D. Aboud, J) issued a ruling which dismissed Revision Application No. 568 of 2019 for being time barred.

The applicant, Yordan Johim Sanga being dissatisfied with the said decision, on 18th May 2020, he filed this application for Review under Rule 27(1), (2) (b), (c) and 27(7) of the Labour Court Rules GN No. 106 of 2007.

When this matter was scheduled for hearing, Mr. Meki Humo, a representative from Researchers Academicians and Allied Workers Union

(RAAWU) represented the applicant while Mr. Ambokile Mwakaje, Principal State Attorney represented the respondent. The respondent raised a notice of preliminary objection to the effect that the Applicant's Notice of Review and the Memorandum of Review are hopelessly time barred.

The respondent argued that Rule 27(1) of Labour Court Rules 2007, Government Notice No. 106/2007 requires an applicant to file a Notice of review within fifteen (15) days from the date of the decision to be reviewed. That the court ruling was issued on 3rd of April 2020 and the applicant's notice was filed on 18th May 2020, therefore the applicant was late by 31 days.

He added that, the Memorandum of Review dated 17th July 2020 was supposed to be filed fifteen (15) days from the date of receiving a copy of the decision to be reviewed. That the drawn orders were served to the applicant on 5th May 2020 and the applicant was supposed to file the memorandum of review by or on 19th May 2020. He invited this court to dismiss the application. He supported his arguments by referring to the Court of Appeal decision of **Barclays Bank (T) Limited v. Phylisiah H. Mcheni**, Civil Appeal No. 19 of 2016, where on similar circumstances to this matter, the Court dismissed the application.

The applicant responded that the Notice of Review and Memorandum of Review were within time because when he filed the Notice for review, he was counting from 5th of May 2020, the day which he was served with the copy of ruling which is 5th May 2020 and not from the day which the said ruling was delivered. The memorandum of review was filed on 17th July 2020 which he argues, was within the prescribed time as there is no specific time for memorandum to be filed therefore the 60 days rule in the Law of Limitation Act, should be relied upon.

Upon going through the Court records, it is undisputed that the applicant filed his notice on 5th May 2020 and a memorandum of review on 17th July 2020.

The issue to be determined by the Court is whether this Court is time barred.

The law applicable in filing application for Review is Rule 27 (1)(7) of the Labour Court Rules, 2007, GN 106/2007 which reads:

'Rule 27(1) Any review shall be instituted by filing a written notice of review to the Registrar within fifteen (15) days from the date the decision to be reviewed was delivered.'

(7) On receipt of a copy of the decision of the review, the applicant shall within fifteen days file a concise memorandum of review stating the grounds for the review sought without narratives or arguments.'

The impugned judgment was delivered on 03rd April, 2020. The applicant filed Notice of Review on 18th May, 2020 being 44 days from the date of decision.

That was contrary to Rule 27(1) of Labour Court Rules, which provides for the notice of review to be filed within 15 days from the date of decision.

Again, the law under Rule 27(7) of LCR provides that, upon receipt of the decision, the applicant have to file memorandum of review within 15 days. In this matter the applicant alleged to have received the decision on 5th May, 2020. He filed the memorandum of review on 17th July, 2020. The same was filed 72 days from the receipt.

Under section 27(1) of Labour Court Rules, filing of the notice is supposed to be counted 15 days after the ruling is delivered. This requirement is made in this manner because filing a notice of review does not require to have details of the decision which is expected to be found in

the copy of ruling. Once the aggrieved party is aware of the Court order and he is aggrieved he can file a notice of review and then prepare himself with filing the memorandum once he receives a copy of the relevant decision.

In the case of **Mariam Enock Chacha vs. Acacia Bulyanhulu Gold Mine**, Misc. Labour Appl. No. 25 of 2018 [2020] TZHC 754 it was held that:-

*'there is no denial that, the present application was filed beyond 15 days prescribed under Rule 27(1) of the Labour Court Rules. learned advocate for the applicant was of the firm stand that, **time for filing notice of review started running when his client obtained copies of decision sought to be reviewed. That is with respect, entirely wrong.** Giving of notice of review does not require having in one's hands, copies of decision sought to be reviewed. Particulars required to be filled on Form No. 6, that is made under Rule 27(5) of the Labour Court Rules, do not require much from copies of decision and decree sought to be reviewed. It is for that reason, in such cases, for purposes of filing notice of review to the registrar, time starts running on delivery of the decision sought to be reviewed.'*

Therefore, time for filing the notice starts running on delivery of the decision and not when the party obtains the copies of the decision.

There is no evidence showing that the applicant had leave to file the application out of prescribed time. The applicant's Counsel relied on the 60 days rule from the Law of Limitation I find he misdirected himself because the law is very clear on the time limit to file application for review. We resort to other laws when the labour laws are silence. On that regard, I find the application to be out of time. Hence, it should be dismissed.



L.J. Itemba

JUDGE

29/06/2021