

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM  
MISC. APPLICATION NO. 105 OF 2021  
BETWEEN**

**ROSEMARY GEORGE MWAIKAMBO .....APPLICANTS**

**AND**

**BOLLORE AFRICA LOGISTICS .....RESPONDENT**

**RULING**

20<sup>th</sup> & 27<sup>th</sup> August 2021

**Rwizile, J.**

The Applicants here in namely **ROSEMARY GEORGE MWAIKAMBO** has filed the present application seeking for extension of time within which to file application for Review of the Judgement of this Court in Revision No. 700 of 2019. The Applicant herein is praying for the orders of the Court in the following terms: -

1. That, the Honorable Court be pleased to extend time within which the applicant may lodge her application for review of the judgement of this Court in Revision No. 700 of 2019, Hon A.E. Mwipopo Judge delivered on 20<sup>th</sup> November, 2020.
2. That, the Honourable Court be pleased to make any other order as it may deem fit.

The Application is supported by the applicant's affidavit. Opposing the application, the respondent filed the counter affidavit sworn by Angeline Kavishe respondent's Legal Manager.

On hearing, the Applicant was represented by Mr. Shayo, learned Advocate, whereas the Respondent was represented by Mr. Stanley, learned Advocate. The application was disposed of orally.

In supporting the application, the applicant's counsel submitted that the judgement awarded the applicant substance allowance on monthly salary from 29<sup>th</sup> April, 2015 to 19<sup>th</sup> August 2019. The same said, the judge found it was 27 months' worth 19,281,780.

Mr. Shayo stated that they claimed for judgement by a letter dated 26.11.2020, then a notice of intention to file review was filed on 07.12.2020. He stated that they got the copy of judgement on 3<sup>rd</sup> December 2020. It was discovered that the judgement had errors on the date. It was dated 13<sup>th</sup> November 2020, and the decree was dated 20<sup>th</sup> November 2020. The Counsel went on submitting that the letter to apply for certification was on 07<sup>th</sup> December 2020 (four days after). She made a follow -up and the same was corrected on 04<sup>th</sup> March 2021.

The same did not have a date which indicate when it was issued, on 9<sup>th</sup> March, 2021, another letter was written to apply for certification of the date they were issued.

They received certified ones on 19<sup>th</sup> March 2021. Therefore, application for review was filed after 15 days.

It was further submitted that they prayed for extension of time to file review, and was of the of the view that since applicant's affidavit and supplementary affidavit contain good reasons for delay as the applicant filed the matter on 06<sup>th</sup> April 2021 after receiving the relevant document for filing application on 19.03.2021, which is 15 days. They thus prayed for the application to be granted because the applicant was diligent and exercised his right.

To support his submission, he cited the case of **Benedict Mmello vs. Bot**, [2006] Vol. 1 E.A, 227 page 230.

In reply to the application the respondent's counsel submitted that the applicant failed to account from 20<sup>th</sup> November, 2020, to 19<sup>th</sup> March, 2021 the court was not informed anything till 31<sup>st</sup> March 2021. On that basis he was of the view that the applicant was not diligent as she failed

to account for each day of delay. Mr. Stanley submitted further that there is an effect of granting this application as the respondent decided to appeal. The intended is appeal can sort the issue complained of. He stated that this court has no jurisdiction to proceed with this application in the event there is a pending appeal before the Court of Appeal. Thus, it was prayed that the application be dismissed.

In rejoinder the Counsel for the applicant submitted that there is no law cited by the applicant or provision which upon appealing, this court is barred from entertaining the suit/review.

Having considered parties' submissions, CMA record and relevant law applied. This Court is called upon to determine the following issues; -

- i) Whether the applicant provided good cause to be granted condonation by the Commission.
- ii) If the first issue is in affirmative then the next issue is *Does the appeal?* bar this Court to grant extension of time for filing an application for review.

In addressing the first issue, it is important to note that Rule 56(1) of the Labour Court Rules 2007, provides that;

*56(1) "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.*

From the foregoing, this court have discretion to extend or abridge period of time prescribed by the Rules upon applicant showing good cause. The applicant prayed to be granted time to file review for two reasons; first it was alleged that the relevant documents for filing an intended application were not yet prepared, as it was not dated. Second, there is an error on the face of judgement which need to be cured

On the other hand, the respondent contended that the applicant failed to act diligently from 19<sup>th</sup> March 2021 to 06<sup>th</sup> April 2021. It was added, allowing the application will affect the appeal.

Having gone through the records, I have to say that, apart from delay, it is on record that the applicant received certified documents on 19<sup>th</sup> March 202. Basing on her notice of intention to review dated 07<sup>th</sup>

December 2020. The record also reveals that the present application was filed on 06<sup>th</sup> April 2021. This, means there was a delay of 4 days of filing the intended application. In the case of **Daudi Haga v. Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal at Tabora, (Unreported), it was held that;

*"A person seeking for an extension of time had to prove on every single day for delay to enable the court to exercise its discretionary power."*

Therefore, it is the duty of the applicant to prove and account for all days of delay to enable the court to exercise its discretionary power. In the present case the applicant has failed to account for the delays


In answering the second issue the relevant provision is Rule 27 of the Labour Court Rules G.N No. 106 of 2007. Rule 27(2) (a)(b) of the Labour Court Rules G.N No. 106 of 2007 provide two possibilities for someone to apply for review. It may happen when the appeal is allowed but not preferred and second, when no appeal is allowed but there is a sufficient reason for review. The rule provides further in subrule (3) that a party who is not appealing from a decree or order may apply for

review of judgement notwithstanding the pendency of an appeal. The respective subrule reads as follows; -

*"A party who is not appealing from a decree or order may apply for review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review."*

In this application its undisputed that the respondent filed an appeal but no any evidence which show that parties have common ground for appeal or respondent has the case to be reviewed. Therefore, since the applicant is not covered by subrule, I am of the view that the pending appeal before the Court of Appeal prevents this court from entertaining this application. The matters, the applicant is seeking, according to the stated rule of this court above, can be entertained by the Court of Appeal. See also the case of **Aero Helicopter (t) Ltd v F.N. Jansen** [1990] Tzca 25; (06 December 1990)

I have to conclude therefore that, under the obtaining circumstances, this application is consequently dismissed. No order as to costs.

  
**AK. Rwizile**  
**Judge**  
**27.08. 2021**



Labour Court