

**THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**  
**MISCELLANEOUS APPLICATION NO. 328 OF 2021**

**BETWEEN**

**ANAND SURENDRA MALAM..... APPLICANT**

**AND**

**LAKE CEMENT LIMITED..... RESPONDENT**

**RULING**

*Date of last Order: 7/03/2022*  
*Date of Ruling: 6/04/2022*

**B.E.K. Mganga,J**

Brief facts of this application are that, on 1<sup>st</sup> November 2019, the respondent terminated employment of the applicant. Aggrieved with termination of his employment, on 26<sup>th</sup> November 2019, applicant signed CMA F1. On 30<sup>th</sup> March 2021, Kazimoto, A, Mediator, dismissed the dispute on ground that it was filed out of time without condonation. Applicant was aggrieved by the said ruling as a result on 7<sup>th</sup> May 2021, while on time, registered revision application online through JSDS e-case registration system. It was stated by the applicant that the Registrar found some errors in the application by the applicant and returned it for corrections after some days as a result, he found himself out of time. It

is further state by the applicant that, he was thereafter authorized by the Registrar to file revision application No. 187 of 2021 manually but the same was dismissed for being time barred after the respondent had raised a preliminary objection and the same sustained by the court.

In his affidavit in support of the application, applicant stated that failure to file application on time was not occasioned and calculated by himself, rather, was due to technicality that arose in the process of filing his case through JSDS e-Case online system. That, the time frame taken by the Registrar to return the said revision application for corrections was not caused by the applicant and the JSDS e-Case online system shows that his application took 11 days for the time-interval from the creation to filing. That, the Registrar and the JSDS e-Case system did not take into consideration the time spent by the applicant in days waiting for the returns of the application for corrections and approval for admission. That, consequently, applicant had been denied a right to be heard.

The respondent fronted the counter affidavit of Amina Hamadi Siwa, who is both her Human Resources and Legal officer, to resist the application.

By consent of the parties, the application was disposed byway of written submissions.

In his written submissions in support of the application, Mr. Benjamin Karume, counsel for the applicant submitted that, applicant has good cause for the delay and cited the case of ***National Bank of Commerce (NBC) Limited v. Sao Ligo Holding Limited and Magreth Joseph, Civil Application No. 267 of 2015*** CAT, ***Tanga Cement Company Limited v. Jumanne D. Masanga and Amos A. Mwalwanda, Civil Application No. 6 Of 2001,*** CAT, ***Samwel Sichome v. Bulebe Hamisi, Civil Application No. 8 of 2015,*** CAT (all unreported) to support his argument.

On the other hand, Mr. George Vedasto Shayo, advocate in his written submission in opposition of the application on behalf of the respondent, submitted that applicant's revision was dismissed for being time barred and that since the dismissal order has not been vacated by the court or by the superior court, then, this application for extension of time cannot be granted. Counsel for the respondent cited the case of ***MM Worldwide Trading Company Limited and 2 Others v. National Bank of Commerce Limited, Civil Appeal No. 258 of 2017*** (unreported). Counsel for the respondent submitted further that

counsel for the applicant was negligent and that there is no sufficient ground for extension of time.

In rejoinder, counsel for the applicant submitted that applicant had advanced sufficient cause for the delay. He argued further that the dismissal order that the matter was time barred cannot be treated as res judicata since such dismissal was only on respect of time limitation but not on merit of the case.

It is undisputed between the parties that revision application No. 187 of 2021 filed by the applicant was dismissed on 19<sup>th</sup> August 2021 by this court for being time barred. The most contentious issue that appears between the parties is whether, after dismissal of the said application it was open to the applicant to file another application before the same court seeking extension of time. Mr. Shayo, counsel for the respondent submitted that it was not, while Mr. Karume, counsel for the applicant had a different view.

I have read cases laws cited by both counsels and I am of considered opinion that once the matter is dismissed for being time barred, the other party cannot make an application in the same court seeking extension of time. In fact, the court of Appeal had an opportunity to discuss a similar issue in ***Worldwide's case*** (supra)

wherein after citing its earlier decision in the case of **Hashim Madongo and Two Others v. Minister for Industry and Two Others**, Civil Appeal No. 2003 (unreported) it held that:-

*" The court was confronted with the issue whether it was open for EADB to go back to the same court seeking extension of time upon her petition being dismissed on account of time bar...it is not open for a party to go back to the same court and seek extension of time".*

In my view, the applicant was supposed to bring this application for extension of time with those ground prior dismissal of revision 187 of 2021 and not after dismissal order. I therefore find that this application lacks merit and I hereby dismiss it.

Dated at Dar es Salaam this 6<sup>th</sup> April 2022.



B.E.K. Mganga  
**JUDGE**

Ruling delivered in chambers on 6<sup>th</sup> April 2022 in the presence of Anand Surendra Malam, the applicant and Henry Kalugira, Legal officer of the respondent.



B.E.K. Mganga  
**JUDGE**