

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 41 OF 2020

CHIKIRA LAURENCE JAHARI.....APPLICANT

VERSUS

THE CHIEF SECRETARY JAHARI.....1st RESPONDENT

**HIGHER EDUCATION STUDENTS
LOAN BOARD.....2nd RESPONDENT**

THE ATTORNEY GENERAL.....3rd RESPONDENT

RULING

05/10/2020 & 09/10/2020

Masoud, J.

With chamber summons supported by her affidavit, the applicant was, under section 14(1) of the Law of Limitation Act, cap. 89 R.E 2019, seeking for extension of time to apply for leave to file application for judicial review. The application was opposed by the respondents who filed a joint counter affidavit.

Parties were, through their learned counsel, namely, Mr Victor Kikwasi, for the applicant, and Ms Narindwa Sekimanga for the respondents argued for and against the application. One issue which emerged from

the submissions of both learned counsel, is whether the applicant adduced sufficient reasons warranting this court to extend the time within which the applicant could apply for leave to file application for judicial review.

The affidavit and counter affidavit of the applicant and respondent were respectively considered by the court in relation to the rival submissions of both counsel. It was common place that the applicant's reasons in support of the application were, firstly, sickness of his father which rendered him to travel to Same, Kilimanjaro to look after him and a bus ticket was relied upon in support; and secondly, illegality of the decision which led to termination of his employment.

The alleged illegality was firstly a result of the failure of the respondent to consider the whole of clause 2.6 of the Guidelines and Criteria for Issuance of Students Loans and Grants 2014/2015 Academic Year. The affidavit was clear that the specific clause which was not considered was sub-clause 3 of clause 2.6 which provided for loan eligibility for applicants falling under the category of equivalent qualifications.

The alleged illegality was secondly based on a complaint that the decision leading to his termination did not take into account the fact that the offence he was alleged to have committed was committed prior to his employment with the second respondent. I was referred to **Valambhia's case** [1992] TLR 387 as to principle of law relating to illegality as a sufficient reason for granting of extension of time.

On the other hand, it was argued by the learned State Attorney for the respondents that the applicant did not disclose good reasons for the extension of time, he did not account for each day of delay, he did not produce any medical chit in support of his father's sickness, the bus ticket produced does not prove that the applicant did indeed travel to Same, Kilimanjaro, and that the alleged instances of illegality of the decision were insufficient as they were not apparent on the face of the record.

In relation to the foregoing, reliance was made by the learned State Attorney on some authorities. In particular, I was referred to **Vodacom Fovs Commissioner General for Tanzania Revenue Authority**, Civil Application No. 107/20 of 2011; **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young**

Women's Christian Association of Tanzania, Civil Application No. 2 of 2010; and **Hamisi Mohamed (as Administrator of the Estates of the late Risasi Ngawe) vs Mtumwa Moshi (as Administratrix of the Estates of the late Moshi Abdallah**, Civil Application No. 407/17 of 2019.

In so far as the rival submissions were concerned, it was clear to me that there was no dispute on the established principles applicable in applications of extension of time. It was equally clear that both counsel agree that when illegality is alleged and it happens to meet the criteria of being apparent on the face of the record and of sufficient importance, it would suffice to justify granting of extension of time. Indeed, the **Lyamuya Construction Company Ltd** (supra) restated such criteria in clear terms whilst drawing inspiration from **Valambhia's case** (supra).

The relevant portion of the decision states:

As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:-

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*

(d) *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

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*In **Valambhia's case** ...this Court [the Court of Appeal] held that a point of law of importance such as the illegality of the decision sought to be challenged could constitute a sufficient reason for extension of time. But in that case, the errors of law, were clear on the face of the record.....Since every party intending to appeal seeks to challenge a decision on points of law or facts, it cannot in my view, be said that in **Valambhia's case**, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law, must be that of "sufficient importance" and would add that it must also be apparent on the face of the record, such as question of jurisdiction, not one that would be discovered by a long drawn argument or process.*

The applicant is, with respect to illegality of the decision, saying that the decision did not take into account the whole of clause 2.6 of the relevant Guidelines which provides for eligibility for loans to applicants falling in the category of equivalent qualifications. The decision to terminate his employment was based on the list of 594 names of the applicants from St Joseph University of Tanzania in relation to which only sub-clause 1 and 2 of clause 2.6 of the Guidelines were considered but not sub-clause 3 of clause 2.6. The apparent failure to consider sub-clause 3 of clause 2.6, it was submitted, led to erroneous decision and injustice on his part.


On my part, it is on the face of the record of the impugned decision that the alleged clause was not at all considered. The affidavit of the applicant was clear on the existence of the allegation of illegality. It also provided for the instances and particulars of such illegality. The illegality was raised by the applicant in his subsequent appeal against the decision in vain. Clearly, the decision saw the applicant losing his job. I cannot for such reason and in respect of sub-clause 3 of clause 2.6 of the guidelines find that the alleged illegality of the decision is neither apparent on the record nor of sufficient importance.

With the foregoing in mind, I am satisfied that the applicant has ably made a case of allegation of illegality of the decision which he wants to challenge by way of filing application for prerogative orders. This alone would suffice for this court to exercise its discretion in extending the time.

In the upshot, the application is meritorious and it is hereby allowed. The application for extension of time to apply for leave to file application for prerogative orders is accordingly granted. The applicant is ordered to file the application within thirty (30) days as from the date of this ruling.

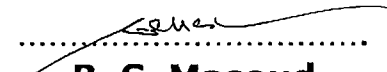
Since this matter relates to employment, I will not make any order as to costs. Ordered accordingly.

DATED and DELIVERED at Dar es salaam this 9th day of October 2020.


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B. S. Masoud
Judge

Court

Ruling delivered in the presence of Mr V. Kikwasi, Advocate for the applicant and Mr B. Mtugani, State Attorney, for the respondents this 09/10/2020.


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B. S. Masoud
Judge

09/10/2020