

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

**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 607 OF 2019**

**QUEEN JONATHAN GAO..... APPLICANT  
VERSUS**

**N.M.B PLC..... RESPONDENT**

**RULING**

*Date of last Order:04/06/2020*

*Date of Ruling: 08/06/2020*

**Z.G.Muruke, J**

Applicant was an employee of respondent. She was terminated for misconduct, thus filed complainant at Commission for Mediation and Arbitration (CMA), the decision which was in her favour. She filed execution on 9<sup>th</sup> June 2017. In the cause, respondent filed Miscellaneous Application number 301/2017 seeking to set aside attachment order dated 9<sup>th</sup> August, 2017, on the ground that decree/award was satisfied. Respondent claimed further that amount of 20.143,846.20 which had to be paid to the Queen Jonathan Gao according to CMA award, has been taken by respondent to liquidate loan applicant took from the respondent. On the date set for hearing applicant and her counsel did not appear, quesquently respondent counsel Mr. P. Kamara moved the registrar to believe that respondent has satisfied the decretal sum, thus court marked the case settled, and file closed.

Later, applicant came to know that, her case was dismissed, then filed another execution No. 676/2018. Respondent objected the application on ground that, case was already marked settled and closed in view of execution No. 250/2017. By the time applicant supplied with order of Registrar, she was already out of time, thus present application for extension of time to file revision. In the affidavit in support of the application applicant claims irregularities on registrars order in execution proceedings on the ground that:

- (i) Court marked settled and closed file for execution number 250/2017 based on the respondent's claims that the decretal sum has been satisfied in the absence of the applicant or her advocate.
- (ii) Amount of 20,143,846.20 awarded to the applicant by CMA was automatically taken by respondent as reimbursement of Loan, without any order, and there was no issue raised on set off at the trial at CMA.

To the applicant, there are two points constitute illegality of the decision, that constitute good cause for extension of time, then, cited several cases on illegality namely:- **Losindilo Zuberi Vs. Ally Hamisi, Civil Application No. 5 of 1999 (unreported) at pp 2-3, Paul Juma Vs. Diesel & Autoelectric Services Ltd & two others, Civil Application No. 54 of 2007 (unreported) at pp 6 and 8 and Salma Mohamed & 12 others Vs. Fida Hussein and Company, Misc. Labour Application No. 116 of 2011 (unreported) at pp. 5-6. Benedict Mumello Vs. Bankof Tanzania, Civil Appeal No. 12 of 2002 (unreported) at P.11. Yusuph Same and another Vs. Hadija Yusufu, Civil Appeal No. 1 of 2002 (unreported) at P.7.**

Respondent counsel on the other hand cited Rule 56(1) of Labour Court Rules, 2007, insisting that granting of extension is entirely in the discretion of the court, but that discretion has to be exercised judiciously. It was further submitted that, if the applicant had wanted to challenge the said set off order, she had the right to do so, but she has herself admitted to have defaulted appearance on 13<sup>th</sup> August 2018, when the said matter was called in court. Thus she denied herself her right to be heard. The present application is an application for extension of time. The fact that the applicant never applied to set aside the order of the registrar dated 13<sup>th</sup> August, 2018, rather opted to file another application for execution registered as execution No. 676 of 2018 the applicant denied herself the right to challenge the said order. Thus, all the averments are irrelevant in the present application, because this is not an application to set aside the expert order, but rather an application for extension of time. The present application therefore is merely an afterthought complained respondent counsel.

Having heard both parties submission in this matter, there is no dispute that, decision by register that marked execution number 250/2017 settled was issued in the absence of the applicant and her advocate. From the records that order has not been set aside to date. To the contrary, applicant filed another execution number 676/2018 that was dismissed in view of settlement order in execution number 250/2017. Applicant counsel has submitted numerous decisions on illegality as a ground for extension of time, but, they are inapplicable in the present application. According to the

chamber summons and notice of application applicant moves this court for the following orders:-

- (a) That this Honourable court be pleased to grant extension of time to enable the applicant to file revision out of time against order of this court dated 13<sup>rd</sup> August, 2018 by Honourable S.H. Simfukwe.
- (b) Costs of this suit be borne by the respondent.
- (c) Any other relief(s) this Honourable court may deem fit and just to grant.

According to the records applicant has already been paid her monies through her account No. 101CL20140500008 which she has not dispute. Equally applicant has not disputed being indebted to, by the respondent.

Applicant seeks extension of time to challenge an order granted in her absence. She should first set aside expert order, once failed then, other remedy may follow. Orders sought by applicant cannot be granted on the ground that, expert order sought to be challenged, has not been set aside. Thus, application for extension of time to file revision without setting aside exparte order, is somehow misplaced. Accordingly application struck out.

  
Z.G.Muruke

**JUDGE**

08/06/2020

Ruling delivered in presence of Nehemia Gambo for the applicant and Sabas Shayo for the respondent.



Z.G.Muruke

**JUDGE**

08/06/2020