

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

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 673 OF 2019

HIGHER EDUCATION STUDENT'S LOANS BOARD.....APPLICANT

VERSUS

GABRIEL ROBI.....RESPONDENT

RULING

Date of last Order: 06/04/2020

Date of Ruling: 27/04/2020

Z.G.Muruke, J.

Applicant filed application for extension of time to file review of this court decision dated 31st July 2019, in revision number 673/2018. Application is supported by an affidavit of Abdallah M. Mtibora applicant's assistant Director of legal affairs, of which relevant paragraph read as follows:-

- (10) That, by the time the applicant was supplied with copies of judgment and Decree, the time for applying for review had already lapsed.
- (11) That, the applicant immediately after receiving the copy of Judgment and Decree of the Court informed the Attorney General as required by the law for further steps.

A copy of the letter to the Attorney General with reference number CEA.187/363/01/8 dated 4th September, 2019 is hereby attached as annexure HESLB-6 and leave of this court is craved to form part of this affidavit.

(12) That, the judgment of the Court by Mruke,J is tainted with illegality in that the court overlooked the requirement of the respondent to exhaust remedies available under the Institution Law and Staff Service Manual before resorting to Labour Courts.

Respondent filed counter affidavit to resist the application, for clarity relevant paragraph is reproduced as follows:

- (4) That the contents of paragraph 8 of the affidavit are noted. It is the respondent's case that it took the applicant over 30 days to collect judgment and the decree which was extracted, and because ready for collection on the 31st of July, 2019.
- (5) That the contents of paragraph 9 of the affidavit are noted. It is the respondent's case that the applicant, up to the date of filing this application, over 90 days from the date of request of the proceedings, has not shown any efforts to follow on the same.
- (7) That the contents of paragraph 11 of the affidavit are disputed. It is the respondent's case that applicant's lawyer was in Court on the 31st of July, 2019 the date of judgment was delivered.
- (8) That the contents of paragraph 12 of the affidavit are disputed. It is the respondent's case that the alleged illegalities were not matters that the court was called upon to decide and further that they formed part of the objection raised and decided by the commission.

Hearing was conducted by way of written submission. Supporting the application, Hangi Chang'a, Learned State Attorney, apart from adopting affidavit in support of the application he submitted that reason for delay as stated in paragraph 11 of affidavit in support is that the applicant immediately after having received copies of proceedings, judgment and decree decided to forward the matter to the office of the

Attorney General so that the office of the Solicitor General could take over the matter. In going through all process of collecting certified copies of proceedings, Judgment and Decree, to the there has been no negligence or relaxty on the part of the applicant.

Learned state attorney went on submitting that, the other ground is on the illegality of the ruling and orders entered. This court has in the number of cases ruled out, inter alia, that illegality of the decision is a good ground for extension of time. Some of these decisions are; **Principal Secretary Ministry of Defense and National Service Vs. Devram Valambhia [1992] TLR 182, this court at page 189 observed that:**

"In our view when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality e established, to take appropriate measures to put the matter and the record right."

Also in **Kashinde Machibya Vs. Hafidhi Said**, Civil Application No. 48 of 2009 Court of Appeal held that;

"Bearing in mind that it is now established law in this country that where a point of law involves the illegality of the decision, that by itself constitutes sufficient reason to grant an extension of time..... even if the appellant's intended appeal is out of time, there is no other option but to grant extension of time."

Equally, in the case of **KALUNGA AND COMPANY, ADVOCATES VS. NATIONAL BANK OF COMMERCE LIMITED [2006] T.L.R 235** this court held that:-

"Since the point at issue is one alleging illegality of the decision being challenged i.e the validity of the High Court's decision in interpreting a statutory provision and the propriety of a judge raising an issue suo motto and making a decision without the parties concerned being heard upon it, sufficient reason has been shown for granting an extension of time to file an application for leave to appeal to the Court of Appeal."

The above position of the law was applied with approval by the Court of Appeal of Tanzania in the case of **ATTORNEY GENERAL VS. CONSOLIDATED HOLDING CORPORATION AND ANOTHER**, Civil Application No. 26 of 2014, Dar es Salaam Registry (unreported) where it was stated that:

"....contentious as to illegality or otherwise of the challenged decision have now been accepted as a good cause for extension of time."

Applicant counsel insisted that due to the said delay applicant eventually decided to apply for extension of time to file review as time for filling the same has elapsed. According to item 3 part III of the schedule to the law of limitation, Cap 89 R.E 2002, the time limit for preferring application for review is thirty days from the date of delivery of judgment. Therefore, the illegality pointed at paragraph 12 of the applicant's affidavit be taken into consideration by this honourable court.

On the other hand respondent counsel Makaki Masatu apart from adopting paragraph 4,5,&7 of counter affidavit he submitted that It is on record that the judgment and decree was ready on the 31st of July, 2019. The decree was extracted on the 31st of July, 2019, thus, from that date it was ready for collection, but it was collected on 3rd of September, 2019. There is no explanation for the delayed collection of the judgment and decree as admitted by the applicant at paragraph eight of the affidavit that it took the applicant over sixty (60) days to file the application whereas the law as alleged in the applicant's submission requires the application for review to be filed within 30 days. The Court of Appeal in the case of **DR ALLY SHABHAY Vs. TANGA BOHORA JAMAAT [1997] TLR 305** stated as follows, at page 307;

Those who come to courts of law must not show unnecessary delay in doing so, they must show great diligence.

Taking 60 days to file an application that are required to be filed within 30 days in an unnecessary delay. The applicant has not, in her affidavit in support of the application, accounted for each of the over sixty days' delay. Accounting for each day of the delay is the requirement of the law as was stated by the Court of Appeal in the case of **SAFARI PETRO VS. BOAY TLEMU (CAT)** Civil Application No. 320/2017 at Arusha where the Court, Mwangesi,JA (unreported) stated at page 5 as follows:

Respondent counsel insisted that the position of law is that, where there has been delay in doing any act in compliance with the requirement of law, each day of the delay has to be accounted for, referring case of **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil

Application No. 3 of 2007, where the court stated that: **Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.**

Failure to account for delays of twenty five days was held to be fatal by the Court of Appeal in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010, Court of Appeal of Tanzania, at Dar es Salaam, where it was stated as follows at page 7-8 as regards failure to explain the delays:

*" For the benefit of the applicant, the period between 25/07/2006 and 26/02/2010 should be excluded. According to paragraph 23 he obtained a copy of the ruling on the application for extension of time on 12/03/2010. The present application was filed on 23rd of March, 2010, which is 11 days later from the date of collecting the copy of the ruling. **From this explanation, there is no single paragraph to account, for the two weeks between obtaining the copy of the decision/ruling on review and the filing of the application for extension of time in the high court. But there is also no explanation for the delay of 11 days, between the date of obtaining a copy of ruling dismissing the application for extension of time by the High court, and the day the present application was filed.** This, in my reckoning, makes, a total of 25 days un-accounted for, and I cannot ignore it. The applicant diligence is therefore called in question, but the conclusion that the applicant has not fully accounted for all **the period of delay is inescapable.**"*

Respondent counsel insisted that since the applicant has not accounted for the over 60 days delay it follows, therefore, that the applicant has not shown good cause as she has not accounted for the number of days she had delayed to file this application. It has been held in the case of **Puma Energy Tanzania Ltd Vs. Spec-Check Enterprises Ltd**, Consolidated Commercial Case No 233 & 252 of 2014, the High Court (Commercial Division) at Dar es Salaam, wherein court stated that inaction and/or negligence of a party is not sufficient reason to extend time. In its own words, the court stated, at page 10 as follows:

“As was held by the Court of Appeal in **Maneno Mengi Ltd & others Vs. Farida Said Nyamachumbe & the Registrar of Companies** [2004] TLR 391, **A.H Muhimbira & 2 others Vs. John K.Mwanguku**, Civil Application No. 13 of 2005, (unreported) negligence or inaction on the litigant and/or its advocate cannot amount to sufficient reason to extend time.”

Mr. Makaki Masatu argued that applicant has failed to account for the delay and further that her explanation exhibits glaring inaction that should not be tolerated by this court taking into account that respondent has been out of employment since 2014.

— ***On Illegality of the Ruling and orders entered as pleaded in paragraph 12***, it is unfounded ground as there is no Ruling and Orders that were entered by this court in its judgment dated 21st July, 2019 which are tainted by the alleged illegality or at all. The Judgment sought to be reviewed is a judgment in revision proceeding. The Revision was preferred by the applicant. None of the grounds that were raised by the applicant in the revision included this purported ground, neither was it

brought to the attention of the Court. Thus, there is nothing on face of record that relates to this claimed ground, complained respondent counsel.

Having heard both parties submission, there is no dispute that grounds for extension of time are as well-argued by both applicant and respondent counsels. It is true that, applicant has not countered for sixty days delayed within which to file intended review. In an application for extension of time each day passed beyond prescribed time counts, and has to be counted for. Equally as correctly submitted by respondent counsel Judgment and decree were ready for collection on the very date of 31st July, 2019. It is surprising that, applicant opted to collect the same on 3rd September, 2019. That is their own negligence that cannot be regarded as sufficient cause to extend time. On the other hand, respondent while replying content of paragraph 12 of affidavit of Abdallah Mtibora avared that.

(8) That the contents of paragraph 12 of the affidavit are disputed. It is the respondent's case that the alleged illegalities were not matters that the court was called upon to decide and further that they formed part of the objection raised and decided by the commission.

From the above content of paragraph eight of respondent's counter affidavit, there is an issue to be discussed as to whether illegality claimed that was overruled by arbitrator existed. Same cannot be done without granting the extension sought by applicant to file review before this court.

It is a well settled principle of law that Plea of illegality in the decision is a good ground for the court to exercise its discretionary power

to grant extension of time. This principle has been established in several cases by this court and Court of Appeal as pointed in the decisions referred above, both counsels.

The applicant in this application is a legal entity which operates for the best interest of the Government. Owner of the applicant is the Government through the Ministry of Higher Education hence the government has interest and that is the reason for Judgment and decree to be founded to the Solicitor General. Extension of time will not prejudice the respondent, but denial of the same will finally affect not only the interest of the applicant but also the interest of the respondent as it will prolong time for finalization of this matter, that will affect both parties.

Despite there being no sufficient cause for the delay, and no counting of each days of delay, there is allegations of illegality in terms of paragraph 12 in support of the application sworn by Abdallah Mtibora for the applicant. Equally respondent counter affidavit at paragraph 8 mention the objection that was overruled by arbitrator at CMA. That alone is sufficient cause for extending time to file review. Accordingly application for extension of time is granted, intended review to be filed within twenty one days from today.



Z.G. Muruke

JUDGE

27/04/2020

Ruling delivered in the presence of Hangi Changa, Luhona Lupogo and Brighton Mtugani for the applicant, and Mr. Martin Mdoe for the respondent.



Z.G. Muruke

JUDGE

27/04/20120