

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 290 OF 2020**

**TANZANIA REVENUE AUTHORITY.....APPLICANT**

**VERSUS**

**JOSEPH EDWARD MISSANA.....RESPONDENT**

**RULING**

22<sup>nd</sup> October & 10<sup>th</sup> December 2021

**Rwizile J.**

The applicant is applying for extension of time within which to file an application for review of the decision of Deputy Registrar of this court. It may be recalled that the decision of the Commission No. CMA/DSM/ILA/R.873/16/836, under section 89(1)(2) of the Employment and Labour Institutions Act, has to be executed as a decree of this court. The respondent therefore, having obtained a decree from the commission against the applicant, applied for execution through Execution No. 599 of 2019. On 23<sup>rd</sup> June 2020, the application for execution was granted in the absence of the applicant.

She was not satisfied by the same, when it was made aware through a letter for execution on 26<sup>th</sup> June 2020 and obtained a copy of the ruling on 9<sup>th</sup> July

2020. She therefore filed this application on 16<sup>th</sup> July 2020 applying for extension of time. By the chamber summons, supported by the affidavit of Jacqueline Chunga advocate for applicant, stating an issue which this application is grounded as follows; *Whether there are reasonable grounds to warrant this court to extend time for the applicant to file an application for review of the decision of the honourable registrar dated 23<sup>rd</sup> June 2020*

Jacqueline Chunga learned advocate argued this application for the applicant. She submitted, in her written submission that the applicant was misled by the court clerk when she appeared for the ruling on 23<sup>rd</sup> June 2020. She said that the application was scheduled on 30<sup>th</sup> July 2020 for ruling, when in fact it was delivered on the same days. It was to her surprise, she submitted that on 26<sup>th</sup> June 2020, received a letter with the certificate of attachment of the sum of 185,268,204.67 for execution. It was her submission further that when she obtained the ruling on 9<sup>th</sup> July 2020, time had expired. She was of the view that apart from showing the reasons for delay, still, the application has an illegality. She said, the amount to be paid was subject of 74,619, 532.87 tax. Based on this, the applicant was of the view that there is high chance of success if the application is granted. She

therefore asked this court to refer to the case of **Rajabu Kidimwa Ng'eni and Another vs Iddi Adam** [1991] TLR .38.

As to illegality, she asked this court to refer to the case of **Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** [1992] TLR. 185, where it was held that an illegality is a sufficient ground for extension of time. In his view this position was as well reiterated in the case of **VIP Engineering and 2 Others vs Citbank**, Consolidated Reference No. 6,7 and 8 of 2006, (unreported). According to the learned counsel, the applicant has shown sufficient cause and also sought reference in the cases of **Tanga Cement Co. Ltd vs Jumanne Massangwa and another**, Civil Appeal No. 6 of 2001, and **CRDB Bank Ltd vs George Kilindu**, Civil Application No 162 of 2006. She said, this application be granted because sufficient cause has been shown.

Submitting in reply, Mr. Mafuru M. Mafuru was of the submission that this application has to be dismissed. It was his submission that the applicant did not show sufficient cause for delay. He submitted that the applicant had to account for all days of delay which she has not. In this point, I was asked to refer to the case of **Tanzania Ports Authority vs MS Pembe Lour Mills**



**Ltd**, Civil Application No. 49 of 2009, CA, (Unreported). In his view, the applicant did not account for 8 days from 9<sup>th</sup> July to 16<sup>th</sup> July when she obtained the ruling and time to file this application. Mr. Mafuru went on commenting that failure to show good cause is contrary to Rule 56(1) of the Labour Court rules, GN No. 106 of 2007. Further, it was argued that the applicant has failed to account for all days of delay and that the delay was inordinate, the applicant did not diligently and without sloppiness prosecute this application and has failed to prove illegality as held in the case of **Tropical Air (Tz) Ltd vs Godson Eliona Moshi**, Civil Application No. 9 of 2017.

Lastly, it was submitted that there was no illegality as the applicant submitted, since the amount payable to the respondent through execution is not subject of taxation because it was not decreed so at the trial. He asked this court to take reference to the case of **Mabibo Beer Wines and Spirits Ltd vs Fair Competition Commission**, Civil Application No. 583/20 of 2018. Mr. Mafuru therefore asked this court to dismiss this application.

By way of rejoinder, it was added that the applicant is empowered by law to enforce tax laws. It was said, the amount of 40,824, 338.90 as Payee for salaries and 33,795,193.97 as compensation for 24 months. In her view, this is an illegality which is enough to support this application as in the case of **Zephania Mwenesano vs Daniel Samwel Chuma**, Civil Application No 274 of 20159CA, unreported.

Having gone through the submission of both parties, I have to say, it is trite that, granting or refusing an application for extension of time is an absolute discretion of the court. It can be further stated that, for the same to be granted, one must show sufficient cause and account for each day of delay. This was stated in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, where the Court of Appeal held inter alia that:

*"...It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse, extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause..."*

In yet another case of **Wambura N. J Waryuba vs The Principal Secretary Ministry for Finance and Another**, Civil Application No.320/01 of 2020, again the Court of Appeal held that;

*"...It is essential to reiterate here that the Court's power for extending time ... is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown.*

However, in the case of **Lyamuya Construction Co. Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010, the Court of Appeal laid down three principles to be considered as hereunder;

- i. The delay should not be inordinate;*
- ii. The Applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. 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*



The principles above have been codified into law in nearly the same manner as in the case laws. Rule 56(1) of the Labour Court Rules, GN No 106 of 2007, provides that before granting an application for condition, consideration should be on whether sufficient cause has been shown.

On illegality, this court fetches supported in the cases of **Lyamuya Construction PS Ministry of Defence**, (supra) and the case of **Finca (T) Ltd and another vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, (supra) and **Mabibo Beer Wines and Spirits Ltd vs Fair Competition Commission** (supra). It was held that illegality is a good ground for extension of time. But in order to plead illegality successfully, I have to add, it must be apparent on the face of the record. The applicant has just pleaded an issue of illegality. It has been stated in her submission that the amount to be paid, to the respondent is subject to taxation. I wonder whether that is an illegality. It needs arguments to prove, in the circumstances of this application that there is an illegality. This point of illegality has no basis, since it is not apparent on the face of the ruling.

Second, the applicant has averred that the delay was due to being absent at the time the ruling was delivered. It is indeed true that, it was delivered in

her absence. It is not disputed in all, but still, the applicant has submitted that on 26<sup>th</sup> June 2020, which means three days after the decision, she received a letter attached with certificate stating the applicant was to pay what was a dispute in execution. No action was taken from 26<sup>th</sup> June to 9<sup>th</sup> July 2020, which is 14 days, when she obtained the ruling. Still, she did not react until 8 days later which is on 16<sup>th</sup> July, when this application was filed. In my considered view, the applicant did not prosecute her case with diligence. Her actions were marred by sloppiness and ought to account for delays with sufficient evidence. From the foregoing, I find this application baseless. I have to dismiss the same, with no order as to costs.



  
**A.K.Rwizile**

**JUDGE**

**10.12.2021**