

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS LABOUR APPLICATION NO. 384 OF 2021

BETWEEN

**DEPOSIT INSURANCE BOARD (LIQUIDATOR OF
FBME BANK LIMITED)..... APPLICANT**

AND

VINAYACHANDRAN PATHAYA THINGAL..... RESPONDENT

RULING

Date of Last Order: 24/02/2022
Date of Ruling: 20/04/2022

B. E. K. Mganga, J.

This is an application for extension of time filed by the applicant herein, praying for this court to extend time so that she could file an application for revision to challenge the decision issued by the Deputy Registrar in Execution No. 373/2019 on 8th April 2020.

Brief facts of the matter are that the respondent was a successful part in Labour complaint No. CMA/DSM/KIN/R. 789/18/302 before the Commission for Mediation and Arbitration (CMA) whereby he filed the complaint against the applicant as a liquidator of FBME Bank Ltd.

Following the CMA 's award, respondent filed execution No. 373 of 2019 before this Court. In the application for execution, among other things, respondent prayed for attachment, withdrawing and or transferring of USD 104,271.25 from account No 992471511 and 99312200 which are alleged to be registered under the applicant's name. Upon determination of the execution, the Deputy Registrar issued Garnishee Order Nisi attaching the said accounts. Applicant was aggrieved by that order but being out of time, she has filed this application seeking extension of time so that she can challenge the said decision.

The application was supported by the affidavit of Acley Chaula, the applicant's legal officer, whereas the respondent filed his counter affidavit opposing the application. At the hearing, applicant was represented by Kause Kilonzo, State Attorney while the respondent was represented by Mr. Adolf Temba, Advocate.

Ms. Kilonzo submitted that there is illegality in the ruling because the ruling was issued while FBME Bank was under liquidation. She submitted further that the ruling shows that the Deputy Registrar was aware that FBME was under liquidation. She went on that in terms of section 41(a) of the Banking and Financial Institutions Act, Act No. 5 of

2006 (Cap. 342 R. E. 2019) when the bank is insolvent, the applicant (DIB) becomes a liquidator with effect like the liquidator appointed by the Court. State Attorney cited section 285 of the Company Act (Cap. 212 R. E. 2019), and submitted that any attachment, execution against asset of the company shall be void when the company is under liquidation.

State Attorney submitted further that; the decision of the Deputy Registrar is not based on the law cited in his decision. She argued that at page 6-7 of the order, the Deputy Registrar referred to section 24 (1), (2), and (3) of Cap 342 (supra), but what is recorded in the ruling is different from what these provisions provide. She went on that by attaching the money that is a subject of liquidation, the order of the court will frustrate the whole process of liquidation.

Ms. Kilonzo submitted that the ruling was received by the applicant on 8th April 2020 and filed this application on 23rd November 2021 while being out of time. she submitted that the court could extend time once there is illegality and cited the cases of ***Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010***, CAT (unreported) and ***Zito Zuberi Kabwe and 2 others v.***

Hon. Attorney General, Civil Application No. 365/01 of 2019,

CAT (unreported) to support her submission and prayed the application be granted.

In response, Mr. Temba, advocate for the respondent submitted that in this application, the applicant has raised two illegalities namely (i) attachment order was issued when there was the process of liquidation and (ii) wrong provision for attachment. Counsel for the respondent submitted that the said illegality is not apparent on record and has nothing to do with jurisdiction. He argued that the alleged illegality can be discovered by a very long process as it is not open that applicant was a liquidator as there is no letter of appointment. He argued further that the mere presence of the name of the applicant to the case did not prove that applicant was a liquidator. Counsel for the respondent went on that in **Lyamuya's case** (supra), the Court of Appeal held that the illegality must be apparent on record. Counsel submitted that the issue of illegality or lack of jurisdiction was never raised before the Deputy Registrar.

Mr. Temba, counsel for the respondent submitted further submitted that the delay is almost one year, and the applicant has not accounted for each day of delay. That, the delay is inordinate and

further that applicant was gross negligent. He went on that the application that was before the Deputy Registrar was relating to attachment and that wrong citation did not affect the application an order for attachment was issued. He prayed the application be dismissed for want of merit.

In rejoinder, Ms. Kilonzo reiterated that illegality is apparent on the face of record. She argued that at CMA, respondent filed the dispute against applicant as liquidator, therefore the illegality is apparent on record and the argument that there is no proof that applicant is liquidator was made with intention of misleading the court. She conceded that applicant has not accounted for each day of delay but was quick to argue that it was held in **Lyamuya's case** (supra) that illegality is a sufficient cause for extension of time.

In this application I am called upon to determine whether the applicant has sufficient cause to suffice the grant of the application for extension of time. It is a well settled law that for the court to exercise its discretionary power of extending time, the applicant must establish sufficient reasons for the delay. This position is clearly prescribed under Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007, It provides:

“The court may, extend or abridge any period prescribed by these rules on application and good cause shown, unless the court is precluded from doing so by any written law.”

In the matter at hand, the only reason advanced by the applicant as reason for extension of time is illegality. Applicant alleges that the illegality is on face of record but counsel for the respondent is of the different view. In the affidavits in support of the application, it was stated that the application for execution was filed and determined by the court while FBME Bank Ltd was already under liquidation and the impugned decision is based on non-existing provisions of the law.

It is a trite law that, illegality is a good reason for extension of time. This position of the law has been emphasized in a range of cases. For instance, in the case of ***Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia [1992] T.L.R. 182***, where it was stated 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 be

established, to take appropriate measures to put the matter and the record right."

Also, the Court of Appeal of Tanzania in the case of ***Attorney General v. Consolidated Holding Corporation and Another, Civil Application No. 73 of 2015, Dar es Salaam Registry*** (unreported)

held that

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

I have cautiously examined the affidavits, impugned ruling, and submissions of the parties, I am of the view that the illegality is on face of record as alleged by the applicant's counsel. The law under Section 285 of the Companies Act (supra), provides that;

"285. Where any company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the assets of the company after the commencement of the winding up shall be void.

The cited provision of the law invalidates any attachment, sequestration, distress, or execution put in force against the assets of the company after the commencement of the winding up process. In the case at hand, it is undoubted that the winding up has commenced, and the assets are under control of the liquidator hence a barred for execution.

Also, as submitted by the applicant's counsel it is apparent that Hon. Deputy Registrar's finding is based on a wrong provision of the law. Section 24(1), (2) and (3) of the Banking and Financial Institutions Act, No. 5 of 2006 provides for permissible activities of a licensed bank or financial institution. Since this is an application for extension of time, I just caution myself into going in detail.

From the foregoing, it is my view that there is a point of law to be discussed in revision. I thus allow the application. Leave is hereby granted to Applicant to file the application for revision within fourteen (14) days from today.

Dated at Dar es Salaam this 20th April 2022.



B.E.K. Mganga
JUDGE

Ruling delivered on this 20th April 2022 in the presence of Kause Kilonzo, State Attorney for the applicant and Flavian Assenga, Advocate holding brief of Adolph Temba, advocate for the respondent.



B.E.K. Mganga
JUDGE