

**IN HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 454 OF 2021**

(Arising from the judgment of the Court (Hon. Aboud, J) in consolidated revision No. 755 of 2018 and 858 of 2018)

**BETWEEN**

**YUSUPH M. KISARE ..... APPLICANT**

**AND**

**HIGHER EDUCATION STUDENTS LOANS BOARD .... RESPONDENT**

**RULING**

Date of last order: 29/04/2022

Date of Ruling: 29/04/2022

**B. E. K. Mganga, J.**

In this application, applicant is seeking extension of time within which to file an application for the court to interpret CMA award issued on 12<sup>th</sup> October 2018 as confirmed and varied by this court (Aboud, J) in consolidated Judgment in Labour Revision Application No. 755 of 2018 and 858 of 2018 dated on 16<sup>th</sup> April 2021. Facts of the application briefly are that, on 10<sup>th</sup> September 2006, applicant was employed by the respondent as Chief Accountant. On 24<sup>th</sup> May 2016 applicant's employment was terminated on ground of sexual harassment after the disciplinary Committee found him guilty of the said misconduct. Applicant filed the dispute before the Commission for Mediation and Arbitration henceforth

CMA complaining that termination of his employment was both substantively and procedurally unfair. On 12<sup>th</sup> October 2018, Hon. Alfred Massay, arbitrator, issued an award that termination of employment of the applicant was substantively fair but procedurally unfair. The arbitrator awarded applicant to be paid TZS 38,400,000/= as six months' salary compensation, TZS 16,896,000/= being cost of transportation of personal effects to Shirati – Rorya his place of domicile, TZS 1,728,000/= being total flight for himself, wife and four children as per fast jet quotation, TZS 6,400,000/= being leave pay and daily substance expenses between the date of termination and date of repatriation.

Both applicant and respondent were aggrieved by the award, as a result, respondent file Revision Application No. 755 of 2018 while applicant filed Revision Application No. 858 of 2018. On 16<sup>th</sup> April 2021, this court (Hon. Aboud, J) dismissed Revision Application No. 755 of 2018 filed by the respondent. In Revision Application No. 858 of 2018 filed by the applicant, the court found as the arbitrator did, that termination of employment of the applicant was substantively fair but procedurally unfair. The court *inter-alia* upheld the Arbitrator's award save for payment of twelve (12) remuneration as compensation for unfair termination in accordance with section 40(1)(c) of the Employment and Labour Relations Act and one

month salary in lieu of notice. On 18<sup>th</sup> November 2021, applicant filed this application for extension of time within which to file an application to seek the court to interpret the said judgment and CMA award.

In the affidavit in support of the notice of application, applicant stated that the delay in filing application for clarification/interpretation was not on account of negligence or inaction, but that he was at all material times in court corridors and that clarification or computation of the items awarded in CMA award and in the judgment is necessary to enable execution.

When the application was called for hearing, Ms. Blandina Kihampa, learned counsel appeared and argued for and on behalf of the applicant while Mr. Elias Mwenda, learned State Attorney, appeared, and argued for and on behalf of the respondent.

Arguing on behalf of the applicant, Ms. Kihampa, learned counsel submitted that there is no specific Rule in the Labor Court prescribing time within which a person can file application for interpretation of the award or the judgment of the court and that the resort was supposed to be the Civil Procedure Code, of which, also has no provision. Counsel submitted further that; the resort is to part III item No. 21 of the Law of Limitation which provides 60 days. She submitted that the Judgment was delivered on 16<sup>th</sup>

April 2021 and that, this application was file on 18<sup>th</sup> November 2021. Counsel went on that; applicant was supposed to file this application on 16<sup>th</sup> June 2021 but filed it six months later. On reasons for the delay, counsel submitted that respondent was initially willing and ready to pay and communicated to the applicant but later, did not head to the demand as a result, applicant filed execution proceedings on 6<sup>th</sup> August 2021. She submitted further that one of the grounds for extension of time for interpretation of this court's judgment is illegality because the judgment of this court gave reliefs to the applicant that cannot be executed. Counsel for the applicant submitted that illegality is a good ground for extension of time and cited the case of ***Arunaben Chaggan Mistry v. Naushad Mohamed Hussein, Civil Application No. 6 of 2016***, CAT (unreported) to support her argument. She concluded that the said illegality is apparent on the face of record and that if the application is granted, no prejudice will occur to the respondent but if the application will be dismissed, applicant will stand to suffer because he has the judgment that he cannot execute.

Arguing on behalf of the respondent, Mr. Mwenda, learned State Attorney, submitted that extension of time is not an automatic right, but it is subject to some conditions. He submitted that the conditions were

stipulated by the Court of Appeal in the cases of ***Ludger Bernard Nyonyi v. National Housing Corporation, Civil Application No. 372/01/2018, Magnet Construction Limited v. Bruce Wallace Jones Civil Appeal No. 459 of 2020*** and ***Lyamuya Construction Company Limited v. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010*** all unreported. State Attorney submitted further that, applicant was supposed to adduce sufficient cause for the delay, account for each day of delay and that the delay should not be inordinate. He submitted that applicant has failed to meet these conditions in his affidavit.

On illegality as a ground for extension of time, State Attorney submitted that the same should be apparent on the face of the record. He was quick to add that illegality in the circumstances of this application, was supposed to be raised before the Court of Appeal because this court have no power to correct any illegality or error of the fellow Judge. He added that the issue of illegality does not feature in the affidavit in support of the application.

In rejoinder, Kihampa learned counsel for the applicant had nothing to add. She however conceded that there is no court order by the deputy

registrar showing that applicant has failed to execute the decree unless interpretation is given by this court.

I agree with the submissions of Kihampa, learned counsel for the applicant that Rule 48(8) of the Labour Court Rules, GN. No. 106 of 2007 that gives power the court to interpret its decision, the decision of the Labour Commissioner or of the CMA does not specify time within which a party may make an application for interpretation. The same is not provided for in the Civil Procedure Code [Cap. 33 R. E. 2019]. Therefore, reliance must be made on part III item No. 21 of the Law of Limitation [Cap. 89 R. E 2019] that provides that if there is no time limit provided in the Civil Procedure Code, the Magistrates' Courts Act, or other written law or no period of limitation is provided in the Act, the limit shall be sixty days. I therefore hold that applicant was supposed to file his application for interpretation within sixty days from the date of judgment of this court.

I have heard submissions of the parties for and against the application. In disposing the application, I will start with submissions relating to illegality in the judgment of this court. It was correctly submitted by Mr. Mwenda State Attorney that, illegality does not feature in the affidavit of the applicant in support of the Notice of application. In fact, there is no even a single paragraph showing that the court's judgment

contains illegalities. Even if it was there, of which it is not, as correctly submitted by State Attorney, this court is not seized with power to correct illegality in the judgment of a fellow judge. That is the domain of the Court of Appeal. If applicant felt that there are illegalities that will cause him not to execute the decree, he was supposed to knock the doors of the Court of Appeal. The ground of illegality therefore fails.

On reasons for the delay, it was submitted by counsel for the applicant that, initially, respondent was willing and ready to pay and communicated to the applicant, but later, did not head to the demand, as a result, applicant filed execution proceedings on 6<sup>th</sup> August 2021. With due respect to counsel for the applicant, there is no single paragraph in the affidavit of the applicant, which is evidence to that effect. As such, that is a mere submission from the bar which is not evidence. In fact, the Court of Appeal in the case of ***Bruno Wenceslaus Nyalifa v. Permanent Secretary, Ministry of Home Affairs and the Attorney General, Civil Appeal No. 82 of 2017*** (unreported) held that:

*"Submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations on evidence already tendered. They are expected to contain arguments and the applicable law. They are not intended to be a substitute for evidence."*

It is my view that, even if in his affidavit applicant could have stated that the delay was due to out of court negotiations; yet that could have not been a good ground for extension of time. The position is now settled that out of court negotiation cannot be a ground for extension of time. This was held by the Court of Appeal in the case of ***M/s. P & O International Ltd v. the Trustees of Tanzania National Parks (TANAPA), civil Application No. 265 of 2020***, CAT (unreported) wherein it held that: -

*"It is trite that pre-court action negotiations have never been a ground for stopping the running of time...the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties...negotiations or communications between the parties...did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by the law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time."*

It was submitted by Mr. Mwenda, learned State Attorney that, applicant has failed to adduce sufficient cause for the delay, account for each day of delay and that the delay is inordinate. I agree with him that applicant was duty bound to prove all these but there is nothing in his affidavit showing that he had sufficient cause for the delay. In the affidavit



in support of the application, applicant did not account for each day of the delay as required by the cases cited by the State Attorney.

For the foregoing, I dismiss this application for being devoid of merit.

Dated at Dar es Salaam this 29<sup>th</sup> April 2022.



B.E.K. Mganga  
**JUDGE**

Ruling delivered today 29<sup>th</sup> April 2022 in the presence of Jacob Kaisi, Advocate, for the applicant and Elias Mwendwa, State Attorney, for the respondent.



B.E.K. Mganga  
**JUDGE**