

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**MISC. LABOUR APPLICATION NO. 08 OF 2023**

*(Arising from Labour Execution No. 63 of 2020 in the High Court, originating from Labour  
Dispute No. CMA/MZ/NYAM/04/2020/01/2020 CMA at Mwanza)*

**KATAVI AND KAPUFI LIMITED.....APPLICANT**

**VERSUS**

**SHUKURU JACKSON MASHIMBA.....RESPONDENT**

**RULING**

*14<sup>th</sup> September & 14<sup>th</sup> September, 2023*

***Kilekamajenga, J.***

The applicant seeks extension of time to file revision against labour execution No. 63 of 2020 which was decided by the Deputy Registrar. The application was made under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E. 2019], section 95 of the Civil Procedure Code, [Cap. 33 R.E. 2019] and Rule 24(1), 24(2)(a)(b) (c) (d) (e) (f) and 24(3)(a)(b) (c) (d) and Rule 56(1) (2)(3) of the Labour Court Rules G.N No. 106 of 2007. The application is accompanied with an affidavit of Twalib Mohamed Seif. In advancing the reasons for the delay. The learned advocate, Mr. Alphonse Nachipyangu for the applicant informed the court on the illegality in the decision of the Deputy Registrar. He further argued that, the applicant was denied the right to be heard. To bolster his argument, he referred to the case of **Khalid Hussein Muccadam V. Ngalo Mtiga and another**, Civil Application No. 234/17 of 2019. On the point of illegality, the



Counsel referred to the cases of **Brazafic Enterprises Limited V. Kaderes Peasant Development**, Civil Application No. 421/08 of 2021 and **TANESCO V. Mafungo Leonard Majura and Others**, Civil Application No. 94 of 2019. He finally prayed for the application to be granted.

On the other hand, the learned advocate Mr. Inhard Mushongi for the respondent partly conceded to the existence of illegality and further stressed that the parties were afforded the right to be heard. When rejoining, the applicant's counsel insisted that the applicant was denied the right to be heard. He urged the court to grant extension of time based on illegality and denial of the right to be heard.

Upon going through the arguments advanced by the parties, the issue for determination is whether the applicant has advanced sufficient reason for this court to grant extension of time. Pushing for the extension of time, the applicant alleged the existence of illegality; he also argued that, the applicant was denied his right to be heard when Labour Execution No. 63 of 2020 was before the Deputy Registrar. On his part, respondent's counsel partly objected the existence of illegality and that the parties were granted the right to be heard. It is a cardinal principle of law that, where there is illegality, the court must grant extension of time in order for such an unlawfulness to be corrected. This stance

was stated in the case of **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015, where the Court of Appeal 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 be established, to take appropriate measures to put the matter and the record straight."*

Further, the Court of Appeal addressed being a reason for extension of time in the case of VIP **Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) that:

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay"*

Furthermore, the applicant's counsel alleged that, the applicant was not afforded the right to be heard. Right to be heard is a natural right, when denied, it may render a nullity proceedings and decision thereof. See the cases of **Transport Equipment Limited v. Devram Valambhia** [1998] TLR 89; **Mbeya-Rukwa Autoparts and Transport Limited vs Jestina George Mwakyoma** [2003]

T.L.R 251 and **Luckson Rutafubibwa Kiiza (The Administrator of the Estate of the Late Angelina Bagenyi) v. Erasmus Ruhungu (The Administrator of the estate of the late Gaudensia Rwakailima)** Civil Appeal No. 375 of 2021. In the instant application, I find the applicant has advanced sufficient cause to warrant this court grant extension of time. In fine, the application is allowed; the applicant is granted twenty one days to file the intended revision. Costs to follow in the course. Order accordingly.

**DATED** at **Mwanza** this 14<sup>th</sup> day of September, 2023.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**14/09/2023**



**Court:**

Ruling delivered this 14<sup>th</sup> September, 2023 in the presence of Mr. Alphonse Nachipyangu counsel for the applicant and Mr. Inhard Mushongi counsel for the respondent.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**14/09/2023**

