

**IN THE HIGH COURT OF TANZANIA  
AT MWANZA SUB-REGISTRY  
(LABOUR DIVISION)**

**APPLICATION NO. 17 OF 2023**

*(Arising from Labour Execution No. 71/2020 dated 26<sup>th</sup> July 2023)*

**IQRA FM RADIO.....APPLICANT**

**VERSUS**

**BUNDALA CHRIPHORD MAGANIRA ...RESPONDENT**

**RULING**

Date of last order: 25<sup>th</sup> October 2023

Date of Ruling: 26<sup>th</sup> October 2023

**MTEMBWA, J.:**

The Applicant filed, a Notice of Application under the certificate of urgency and a Chamber Summons under **rule 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f), rule 24 (3) (a), (b), (c) and (d) and rule 25 (1), (2), (3), (4), (5), (6), (7) (8) and (9) of the Labour Court Rules, 2007** and section 14(1) of the Law of Limitation Act, Cap 89 RE 2019 seeking for an order of extension of

time for lodging a written notice of Review out of time. The same was support by the Affidavits of Mr. Twaha Bakari and Mr. Chiwalo Nchai Samweli, the learned advocate for the Applicant.

During hearing of this Application, the Applicant was represented by Mr. Chiwalo Nchai Samweli, the learned advocate while the Respondent appeared in person. Hearing proceeded orally.

In view of the Statement of the material fact, the Applicant essentially claims that, way back in the year 2020, the Respondent initiated a Labour Dispute at the Commission for Mediation and Arbitration (CMA) at Mwanza (CMA/MZ/NYAM/29/273/2020) claiming for payment of Tsh. 3,900,000/=. That the Applicant happened not to appear during hearing as a result thereof, an ex-parte Award was issued on 30<sup>th</sup> October 2020. That having obtained the said Award, the Respondent filed Execution Case No. 71/2020 and the same was granted ex-parte on 18<sup>th</sup> October 2021.

The affidavit reveals further that in the year 2021, the Respondent served to the applicant through Court Broker one Kasanga H. Kasanga Rock City Takers LTD a fourteen days' Notice of warrant to attach and sale the Applicant's movable properties aiming at settling the Decree. That on or about September 2021, the Respondent accompanied by his court broker attached two Desktop computer machines, three Microphones, one table, one power mixer and three microphones stands estimated approximately to be worth of

Tsh. 4,200,000/= . That upon such attachment no further information concerning the sale was brought to the attention of the Applicant.

The affidavit reveals further that, surprisingly, on 12<sup>th</sup> September 2023, the Respondent, through Nyadhi Investment Co. Limited t/a Nyadhi Investment Co. Limited Auction Mart served to the Applicant a fourteen days Notice of payment of Tsh. 3,500,000/= plus Tsh. 720,000/= as execution costs. That upon perusal of the Court records, the Applicant through his counsel revealed that there was an order to that effect dated 26<sup>th</sup> July 2023.

At the hearing, Mr. Chiwalo Nchai Samweli, the learned advocate for the Applicant expounded further on the pleadings filed in Court. He submitted that the Application is typically centered on paragraphs 6,7, 8, 9, 10, 15, 16 of the affidavit regarding accounting for delay. And paragraphs 11, 12, 13 and 14 of the affidavit regarding illegality. He said, there has been no information on her client's part concerning the sale of the items attached in view of an order dated 18<sup>th</sup> October 2021. He submitted further that, in view of the previous attachment of the items, the Applicant thought that the Respondent's claim was fully settled. It was until 12<sup>th</sup> September 2023 when the applicant was served with the said Notice. He said, his client was not called or given an opportunity to present her case before the order dated 26<sup>th</sup> July 2023 was issued.

The learned counsel for the Applicant, In the course of accounting for the days submitted that his client was served with the

said Notice on 12<sup>th</sup> September, 2023 as aforesaid. That on 14<sup>th</sup> September 2023 his law firm styled MONOTARGET ADVOCATES was engaged. He then perused the Court file and had to prepare the pleadings up to 18<sup>th</sup> September 2023. The instant Application was filed on 19<sup>th</sup> September 2023. However, there happened a problem with regard to JSD2 case management system as a result thereof, the same was admitted on 22<sup>nd</sup> September 2023. He supported his submissions by citing cases of ***Samson Kasubi v. Dala Kasubi***, Misc. land application No. 31 of 2022, HC at Mwanza and ***Wambura N. J. Waryoba v. The Principal Secretary Ministry of Finance & Another***, Civil Appeal No. 225/01 of 2019, CA at Dar es salaam.

On the point of illegality, the learned counsel for the Applicant submitted that the Honourable court was not properly moved the provisions of ***rule 24 (1), (i) – (iii) of the Labour Court Rules, 2007*** were not complied with by the Respondent. He said therefore the order dated 26<sup>th</sup> July 2023 was tainted with illegalities. He referred me to page 12 of the case of ***Arunaben Chaggan Hussein v. Naushad Mohamed Hussein***, Civil Appeal No. 6 of 2016, CA at Arusha. Finally, he prayed that the Application be granted with costs.

In reply, the Respondent submitted that he is not concerned with what transpired in this Court. What he claims is only his salary arrears. He requested the assistance of the Court to have his rights. He wondered why the Applicant is not paying his dues. That at the time of the first attachment, the Applicant did not complain anywhere.



It is this time that he is complaining having been served with the fourteen days notice. He added further that, the Applicant had an ample time to pay him but in vein. He attacked the learned counsel's submissions to the effect that there was no evidence that the attached properties previously valued at Tsh. 4,200,000/=. Finally, he submitted that, he will only stop to attach the movable properties of the applicant unless he is paid his dues fully. He prayed that the Application be dismissed.

In rejoinder, the learned counsel for the applicant was very brief. He submitted that the Respondent has not confined himself to what he deposed in his affidavit. He said, it was a duty of the Respondent to move the court properly. He then insisted that the Application be granted.

On my part, having gone through the records and submissions by the parties, the central and crucial issue here is whether an order of extension of time to file a written notice of review should be granted. From the records and submissions by Mr. Chiwalo Samweli, the learned Advocate for the Applicant, the Applicant has no dispute at all in respect to orders dated 18<sup>th</sup> October 2021 in Execution Case No. 71/2020 and subsequent attachment of the items as listed above. What is in dispute by the Applicant is the order dated 26<sup>th</sup> July 2023 which re-opened the execution process with new items for attachments.

The learned counsel for the Applicant all the time insisted that his client was involved in any way before an order dated 26<sup>th</sup> July 2023 was issued. He is of the view that before the issuance of the said order there was a need to have him heard. I have looked at the impugned order dated 26<sup>th</sup> July 2023 only to note the following, as quoted below;

**"ORDER OF THE COURT"**

<i>Date</i>	:	<i>26/07/2023</i>
<i>Coram</i>	:	<i>Hon. C.M. Tengwa, DR</i>
<i>Decree Holder</i>	:	<i>Present</i>
<i>Judgment Debtor</i>	:	<i>Absent</i>
<i>C/C</i>	:	<i>Felista (RMA)</i>

**Decree Holder: -**

*The previous attachments did not satisfy the decreed amount. As such I pray a new warrant of attachment to be issued in respect of the properties listed on my letter dated 25<sup>th</sup> July, 2023. I equally proposed one Rebeca to be my court broker.*

**Court:-**

*Prayer granted, the properties of the Judgment Debtor to be attached and sold so as to satisfy a sum of Tshs. 3,500,000/= Warrant of attachment is hereby issued and Rebeca Court Broker is hereby appointed".*

The above quoted proceedings indicates that on 26<sup>th</sup> July 2023, the Applicant was not present when the matter was called up for orders. It is also evident that the selection of the Court broker to carry out the warrant of attachment was made on the said day. In the

circumstances, I agree with the learned counsel for the Applicant that the Applicant was not called or heard before the orders were issued. Having so observed, the next question is whether time should be enlarged to allow the Applicant file a written notice of Review out of time. As submitted by the Learned Counsel for the Applicant, the order was issued on 26<sup>th</sup> July, 2023 and was so informed having perused the court records on 14<sup>th</sup> September, 2023. By that time, fifteen (15) days were already lapsed in terms of **rule 27(1) of the Labour Court Rules, 2007**.

It is a trite law that whoever wants this Honourable court to enlarge time, he is required to show good cause why time should be enlarged. What is a good cause is a question of fact, and this may vary with the circumstances of each case. In fact, each case must be decided in its own facts. In the case of ***Mansoor Daya Chemicals Ltd Versus National Bank of Commerce, Civil Application No. 88 of 2016, CAT at Dar es Salaam (unreported)***, Massati, J.A (as he then was) had this to say at page 4 to 5 of the of the ruling;

*"In an Application for extension of time under Rule 10 of the Rules, an Applicant is required to show good cause why time should be extended. What is a good cause is a question of fact, and this may vary with the circumstances of each case. But it is common ground that in such an application the Applicant must show: -*

- i. The length of the delay*
- ii. The reason(s) for the delay that would account for each day of delay.*
- iii. If there is an arguable case".*

In the present Application, the Applicant has explained the length of delay and accounted for all days. The Application was brought promptly having been served with the fourteen days notice. In my considered opinion also the Applicant has an arguable case if he is allowed to present a written notice of Review and ultimately a Review. I say this because the right be heard is a constitutional guarantee under our Constitution of the United Republic of Tanzania of 1977 as amended from time to time. That alone suffices to dispose this Application. I will not deal with the question of illegality. Since I have found that the Applicant has arguable case, I see no reason to refuse to grant this Application.

In the upshot, the Application is granted. The Applicant is to file his written notice of Review within fourteen days (14) from today. This being the Labour dispute, there will be no order as to costs.

I order accordingly.

**DATED at MWANZA** this 26<sup>th</sup> October 2023.



  
**H.S. MTEMBWA**  
**JUDGE**