

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA SUB- REGISTRY**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 17 OF 2023**

**JONATHAN LUTHER KIULA** \_\_\_\_\_ **1<sup>ST</sup> APPLICANT**

**LEONARD RICHARD MMBAGA** \_\_\_\_\_ **2<sup>ND</sup> APPLICANT**

**HERMAN JOSEPH KASSENGA** \_\_\_\_\_ **3<sup>RD</sup> APPLICANT**

**ELIJA NGOYANI RUMBE** \_\_\_\_\_ **4<sup>th</sup> APPLICANT**

**VERSUS**

**MINISTRY OF MINERALS** \_\_\_\_\_ **1<sup>ST</sup> RESPONDENT**


**ATTORNEY GENERAL** \_\_\_\_\_ **2<sup>ND</sup> RESPONDENT**

**RULING**

*02/04/2024 & 31/05/2024*

**BADE, J.**

This is Ruling against an Application for the grant of an order for extension of time within which the Applicants can file an Application for Leave to apply for Judicial Review. They aim to challenge the validity of the respondents' decision and the act of suspending a mining license in respect of mining site block C, Mererani, Simanjiro and placing the same

  
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under Military control. The Application is made under the provisions of 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 6 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules G.N No. 324/2014 [herein referred as "the Rules"] and any other enabling provisions of the law. The Application is preferred through a Chamber Summons which is supported by the Applicants' affidavit.

The Applicants' affidavit has canvassed various facts in support of the Application explaining the reasons for seeking an extension of time.

To give context to the Application, I revisited the facts of the case albeit briefly. The Applicants filed Misc. Civil Application No. 54 of 2022 before this Court (Gwae, J.) applying for a Leave to file a representative suit on behalf of 536 persons. The Application was granted and they were permitted to institute a representative suit on their own and on behalf of 536 other persons against the Respondents within fourteen (14) days from the date of the order. The Applicants failed to heed with the aforementioned order on time, so they filed Misc. Civil Application No. 91 of 2022 before this Court (Kamuzora, J.) praying for an extension of time to file a representative suit against the Respondents. After hearing

their submission, this Court found out that Applicants were able to establish good cause for their delay, and hence their Application was allowed and they were given 14 days within which to file representative suit in court. Again, they failed to heed to the said order on time, hence the instant Application.

This Application was disposed of by way of written submissions. The Applicants were represented by Mr. Frank Wilbert Makishe, learned advocate, whereas the Respondents were represented by Ms. Zamaradi Johannes Nyamuryekung'e, learned State Attorney.

Counsel for the Appellants adopted the contents of the affidavit and the supplementary affidavit to form part of his submissions. Mr. Makishe submitted that Rule 6 of the Rules limits Application for Leave to apply for Judicial Review to six months. He contends that the act or omission to which the Applicant wishes to challenge was the act of the 1<sup>st</sup> Respondent to suspend mining license no. MIL.490/2013 in respect of mining site in block C, Mererani Simanjiro in March 2020. The Applicants were working on this mine site when their mining licence was suspended leading to loss of their employment, forming a sham joint venture with Sky Group Associates Limited, placing mine site in block C together with the properties of the employer under military control, an act which

prevented the Applicants from executing their rights in the said mine site, and offering the mine site block C to new investor before executing Applicants rights.

Mr. Makishe argues that M/S Sky Group Associate Limited was the successor of M/S Tanzanite One Mining Limited under which the Respondent had a joint venture, but later the Applicants learnt that M/S Sky Group Associates Limited has no legal existence for want of BRELA registration. He referred this court to annexure WWT2 collectively.

Moreover, Mr Makishe alleged that strangely the Respondent knew that M/S Sky Group Associate Limited had no legal existence but still formed a joint venture with them offering by 50% shares, referring this court to the said annexure WWT2 collectively. The Applicants worked under this Joint Venture arrangement until March 2020 when the Respondent suspended Mining License no. 490/2013 for reasons that it was granted illegally and without considering the Applicants' employment affairs.

It is further argued by Mr. Makishe that due to misplacement and loss of employment the Applicants filed Labour Dispute No. CMA/ARS/ARB/112/2018 seeking for their salary arrears, upon which the Commission made an order for the payment of eleven (11) months remuneration. He argues that the Applicants executed the said award

via Execution no. 31/2021 unsuccessfully due to the fact that the properties in execution were kept under military control. He again referred this court at annexure WWT4 collectively. Mr. Makishe argues that the means to achieve the Applicants' rights became challenging because M/S Sky Group Associate Limited did not exist though they took over the Applicants' employment from their predecessor M/S Tanzanite One Mining Limited, referring this court to Mwananchi News Paper dated 14th December 2014 as per annexure WWT2 collectively.

Mr. Makishe contended that the Applicants are 540 in number, thus they filed Misc. Civil Application No. 54 of 2022 seeking to be allowed to file for a representative suit, an order which was granted on 21/02/2023. Meanwhile, he maintained that as per the provision of section 14 (1) of the Law of Limitation Act, the sought for extension of time. Mr. Makishe argues that by 21/02/2023 sixty (60) days to file the Leave to apply for Judicial Review remedy under Rule 6 had elapsed, making the remedy available for the Applicants becoming Application for extension of time citing section 14 (1) and (2) of the Law of Limitation Act and the case of **Laurent Simon Assenga vs Joseph Magoso & Another**, Civil Application No. 50 of 2016. He insisted that the delay by the Applicants to apply for leave was caused the illegal joint venture between STAMICO

and M/S Sky Group Associate Limited in 2014 which was not known to the Applicants until 02/03/2022 when the Applicant requested for information from BRELA, referring this court to annexure WWT3. He also maintained that when the Applicants became aware of the counterfeit Joint Venture between 1<sup>st</sup> Respondent and M/S Sky Group Associate they had already pursued the Labour Dispute through CMA/ARS/ARB/112/2018 which is unresolved as the properties due for attachment are kept under military control.

Moreover, Mr. Makishe explained that the Applicants had to file a representative suit since they are 540 in number, an order although granted, was limited to 14 days to file their suit. Unfortunately, the order was found to be erroneous, thus the Applicants requested for correction of the same, and when the corrected copy was made available to the Applicants the period of 14 days had already elapsed and thus they had to once again seek for an extension of time that was granted on 21/02/2023, hence, the instant Application.

Mr. Makisha further argues that the criteria for the grant of extension of time to file leave is whether the Applicants have sufficient interest and instantly, the Applicants are willing to ask this court to declare that the Joint Venture arrangement between STAMICO which was under 1<sup>st</sup>

Respondent and M/S Sky Group Associates Limited was illegal; and the fact that the Government through the 1<sup>st</sup> Respondent suspended the Mining License no. 490 of 2013 for being granted illegally is a problem caused by the Government itself through the 1<sup>st</sup> Respondent. That, the Government through 1<sup>st</sup> Respondent placed the mine site block C in Mererani, Simanjiro under military control preventing the Applicants' access for them to attach properties of their employer was an illegal act. Further, despite the Respondent's promises to settle the Applicant's claims, these promises are vain as pleaded in paragraph 7 of the counter affidavit. To support his position, the counsel cited the case of **Principal Secretary, Ministry of Defence and National Service vs DPP Valambhia [1992] TLR 185**. It is Mr. Makishe's contention that the Respondents will not be prejudiced in the event that this Application is granted, as the counter affidavit do not demonstrate any injury that will likely occur. He maintains that the Applicants have suffered so much by the mistakes committed by the Respondent, as they cannot even access their security funds since their employer do not exist and all this sham is protected by the state at expense of innocent people. He insists that the only way to challenge the Respondent is by way of Judicial Review.

Opposing the Application, Ms. Johannes prays to adopt the contents of the filed counter affidavit and form part of her submissions. She contended that the issue to be determined by this court in the present Application is whether the Applicant has demonstrated or advanced any good or sufficient cause to warrant a grant of extension of time. Ms. Johannes further argued that it is trite law that an Application for an extension of time is at the discretion of the court to grant or refuse. She was quick to caution however, that the said discretion must be judiciously exercised which means according to the rules of reason and justice and not according to private opinion or arbitrarily. In her opinion, the Applicants disclosed no good reasons that may warrant this court to extend time as the Applicants have not fully accounted for all the period of delay. To buttress her position, she cited the case of **Lyamuya Construction Company Ltd vs Board of Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**. She further contended that the above cited case reinforces the well-established principle that a litigant who wishes the court to extend time has an obligation to explain and account each day of delay and the reason for the delay must be sufficient. Ms. Johannes added that the principle that an Applicant must account for each day of



delay has been so held in various cases including the case of **Sebastian Ndaula vs Crave Rwamafa (legal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014.

She argued that as stated by the Applicants in their submission, they filed Misc. Civil Application No. 54 of 2022 for which an order was granted by this court. However, due to the mistake found in the court's order they requested for correction and unfortunately, as they obtained the corrected order the time to file a representative suit had already lapsed. The Applicants then filed an Application for an extension of time to file representative suit which was granted on 21/02/2023 via Misc. Civil Application No. 91 of 2023, thereafter the afterwhich the Applicants came with this present Application filed on 06/03/2023, past a period of 14 days from the delivered order of the previous Application Misc. Civil Application No. 91 of 2023. Supporting her position, she cited the case of **Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007.**

She recounts that the Applicants failed to show what transpired between 21/02/2023 to 06/03/2023 when the Applicants filed this application. She insisted that the applicants have neither accounted for each day of delay nor have they shown sufficient reason for delay to file the

Application in time. Instead, she reckoned, the Applicants through their advocate's affidavit and submissions are busy explaining what transpired in court since the first Application for Representative Suit up to the last order delivered on 21/02/2023, explaining the delay that is referred to as a technical delay which has been held to be excusable in various court's decisions.

She argues that technical delay aside, the Applicants have not offered any explanation for the delay in filing their Application for extension of time as 14 days reckoned from the date this court granted extension of time to file a representative suit, citing the case of **Melau Mauna & Others vs The registered Trustees of the Evangelical Lutheran Church in Tanzania (ELCT) North Centre Diocese & Another**, Civil Application No. 546/02/2021 to cement her position.

Moreover, she contends that in the absence of explanation for the cause of delay it will be difficult for the court to exercise its discretion in the applicants' favour considering that it has long been settled that the court's discretion must be exercised judiciously on the material placed before it as opposed to sympathy or capriciousness, and cited the case of **Daphne Parry vs Murray Alexander Carson** [1966] EA 546 for this position.

On the issue of illegality as a ground for grant extension of time, Ms. Johannes argues that the Applicants failed to show any illegality in the impugned decision which they wish to challenge through judicial review, rebutting the contention that the 1<sup>st</sup> Respondent action of suspending Mining license no. L. 490/2013 and placing the mine site blocks prevented the Applicants from accessing the properties to execute their order from labour dispute against their employer is illegal.

She argues that the said illegality falls short of the criteria of illegality underscored in the case of the **Principal Secretary, Ministry of Defence and National Service** (supra), as not all allegations of illegality would constitute a sufficient reason for granting extension of time, discerning that it will only constitute a sufficient reason if the alleged illegality is apparent on the face of the record, not one that has to be established by a long-drawn argument or process. Also, she insisted that the illegality must be one of sufficient importance.

In her opinion, as it is in this application, whether or not it was illegal for the first Respondent to suspend the Mining License No. ML460/2013 would require a long-drawn argument to establish, and also the Applicants have failed to show whether the issue has sufficient importance to constitute a ground for exercising the court's discretion in

the Applicants' favour since the decision of suspension was issued legally and the Applicants were given the right to be heard through Labour Court Dispute No. CMA/ARS/ARB/112/2018 upon which the Commission held in their favour. In her view the Applicants have failed in showing any illegality in the impugned decision worth the court's attention.

Further she argued that the Applicants filed an application for a leave to file Judicial Review on mandamus, certiorari and prohibition before this court on 24/06/2020 in Misc. Civil Cause No. 8 of 2020, unfortunately the said Misc. Civil Cause No. 8 of 2020 was struck out on 22/04/2021 because the matter was filed prematurely. However, the Applicants came to file this Application on 31/03/2022, a period of 343 days following the striking out of the previous Application.

Rejoining, Mr. Makishe explained that the period of 14 days was the time granted by this court through Misc. Civil Application No. 91 of 2023 for the Applicant to prepare and filed the instant Application, thus no inordinate delay was occasioned by the Applicants.

On the argument that the Applicants failed to show illegality of the 1<sup>st</sup> Respondent's decision, Mr. Makishe submitted that the Respondents did not dispute the fact that through their joint management, operation and administration, they had overall mandate to foresee the welfare of the

Applicants, or that the presence of the Army marshals prevented the Applicants from executing their award since the military do not take orders of civil nature. He also made a note of the fact that while the Respondent did not dispute these issues, they considered them of insufficient importance to constitute a good ground for exercising the court's discretion in their favour. The counsel insisted that the Applicants unsuccessfully executed the award from the Commission due to the ban under advert dated 01/03/2020 annexed as WWT3 collectively. He added that the act of placing those properties under military deprived the Applicants' right to pursue the said right, which is illegal on the face of the record.

Having perused the filed affidavits and the rival submissions by parties, the task before me is to determine whether the Applicant has shown good cause for an extension of time to be granted.

In the case of **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) there have been established guidelines to be followed before granting an extension of time, thus:

- (a) The applicant must account for all the period of delay.

- (b) Delay should not be inordinate.
- (c) The application must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take.
- (d) If the court feels that there are other sufficient important reasons such as the illegality of the decision sought to be challenged.

It is on the record that Applicants applied for extension of time to file a representative suit against the 1<sup>st</sup> Respondent via Misc. Civil Application No. 91 of 2022. Their said Application was granted and they were given 14 days within which to file the representative suit. The said order was delivered on 21/02/2023. The Applicants filed this Application on 06/03/2023. Counting from 21/02/2023 when the order was delivered to 06/03/2023 when this Application was filed is 14 days, which is perfectly within the time given to the Applicants by the court. The argument by Ms. Johannes that the Applicants were required to account each day of delay from 21/02/2023 to 06/03/2023 when they filed this Application is misconceived as the principles on the case of **Lyamuya Construction Company Ltd** (supra) do not apply where the Applicant was given a prescribed time by the court within which they could take a certain action.

The application is accordingly granted. Given the fact that the Applicants are huge group of people endeavouring to file a representative suit, the Applicants are given 30 days from the date of this Ruling to file their representative suit. No orders as to costs.

It is so ordered.

**DATED at ARUSHA this 31st day of May 2024**



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**A. Z. Bade**  
**Judge**  
**31/05/2024**

Judgment delivered in chambers at **ARUSHA** this **31st** day of **May 2024**, before the parties / their representatives.



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**A. Z. Bade**  
**Judge**  
**31/05/2024**