

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

**IN THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**APPLICATION NO. 22 OF 2023**

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

**VERSUS**

**BUNDALA CHRIPHORD MAGANIRA ..... RESPONDENT**

**RULING**

9/2/2024 & 16/2/2024

**ROBERT, J**

The applicant, IQRA FM Radio, filed this application under certificate of urgency seeking an order for extension of time to file a memorandum of review. The application arises from Labour Execution No. 71 of 2023 originating from Labour Dispute No. CMA/MZ/NYAM/273/2020. The application is supported by an affidavit of Twaha Bakari, the Chairman of JUQUSTA, the owner of the applicant's radio, and Mr. Chiwalo Nchai Samwel, learned counsel for the applicant.

In Labour Execution No. 71 of 2020, the respondent (then Decree Holder) successfully prayed for an order for additional attachment of

properties of the applicant (then Judgment Debtor). The order was issued ex-parte on 26/7/2023 and served on the applicant on 19th September 2023.

The applicant successfully lodged an application for leave to lodge a Notice of Review (Application No. 17/2023) and later lodged the Notice of Review. Since the time to lodge an application for review had already passed, the applicant filed this application seeking an order for extension of time to file a memorandum of review out of time.

Mr. Chiwalo Nchai Samwel, learned counsel for the applicant, submitted that the applicant is based on two points: illegality and the fact that the applicant has accounted for each day of delay.

Regarding illegality, Mr. Samwel pointed out the irregularities in the execution process, including discrepancies in the amount claimed by the respondent and the properties attached. The applicant believed the outstanding debt was already settled following the initial attachment of properties. However, a subsequent notice was served seeking additional attachment which creates confusion.

Highlighting further on irregularities, he pointed out the respondent's use of a letter in his application instead of complying with the rules guiding

filing of such applications and the lack of notice to show cause as required by Order XXI Rule 20 (1) (a) of the Civil Procedure Code.

In respect of counting for each day of delay, the learned counsel explained that the applicant was served with the decision on 19/9/2023, while the decision was delivered on 26/7/2023. The applicant lodged an application for filing a notice of review out of time on 19/9/2023 which was granted on 26/10/2023, and subsequently filed this application on 2/11/2023.

In response, the respondent, appearing in person, argued that the reasons stated by the applicant are not meritorious. He contended that the applicants were not accepting service, and therefore, they cannot argue that they were not aware of the case filed in court.

The Court has carefully considered the submissions made by both parties. On the issue of illegality, the Court finds that, the applicant has raised valid concerns regarding discrepancies in the execution process, including the amount claimed, properties attached, and procedural irregularities. These issues raise questions about the fairness and legality of the execution process.

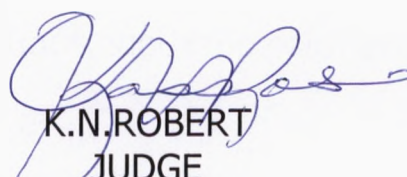
On the issue of counting for each day of delay, the applicant has reasonably explained the sequence of events leading to the filing of this application. The applicant filed an application for filing a notice of review out of time promptly after being served with the decision, and this application followed within a reasonable timeframe. The respondent's argument that the applicants were not accepting service does not directly address the concerns raised by the applicant regarding the irregularities in the execution process.

Therefore, considering the irregularities in the execution process and the applicant's reasonable explanation for the delay, the Court finds merit in the applicant's application for an extension of time.

Consequently, the application for extension of time to file a memorandum of review is hereby granted. The applicant shall file the memorandum of review within 14 days from the date of this order.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
29/2/2024