

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT MOROGORO**

**MISCELLANEOUS APPLICATION NO. 13 OF 2019**

**MOROGORO MUNICIPAL COUNCIL.....APPLICANT**

**VERSUS**

**ELIZABETH SILAYO.....RESPONDENT**

**RULING**

*Date of last Order: 23/11/2020*

*Date of Ruling: 23/11/2020*

**Z.G.Muruke, J.**

Applicant filed present application for extension of time to file counter affidavit in Revision number 11/2019. Reason advanced is that she was assigned to deal with review exercise of Morogoro Municipal by laws, thus delayed. And further that, she being the one in conduct of the matter since Commission for Mediation and Arbitration (CMA), she was the only responsible to swear and file counter affidavit on behalf of respondent in Rev. No. 11/2019. Respondent counsel Kitua Kinja objected the application on reasons of lack of sufficient cause, on the following points:

- (1) There is no evidence attached to the affidavit to prove that, applicant counsel Joice Selo was assigned tusk to review by laws.
- (2) Applicant is an institution that is runned not only by applicant counsel.

Mr. Kitua Kinja then prayed for dismissal of the application for lack of sufficient cause. In rejoinder applicant counsel insisted what she submitted in chief.

Having heard both parties submission, gone through court records, it is principal of the law that, extension of time under Rule 56(1) of the Labour Court rules, is upon sufficient cause. Looking at the affidavit in support of the application, there is no any document attached to prove that applicant was assigned to Review Morogoro Municipal by Laws. It was expected that evidence to be in the affidavit in support of the application, but there is none.

The above notwithstanding, applicant request is right to file counter affidavit to be able to be heard in revision number 11/2019. That cannot be done without extension sought to be granted. Right to be heard is one of fundamental principals of natural justice, failure of which vitiates proceedings. Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without** being afforded a chance of being heard. The right to be heard is a value right and it would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

To the best of my understanding, **the Principles** of natural justice should always be dispensed by the court, that is both parties must be

heard on the application before a final decision. Failing which there is miscarriage of justice as it is wrong for the judge to impose an order on the parties and such order cannot be allowed to stand. **Implicit** in the concept of fair adjudication lie cardinal principles namely that no man shall be condemned unheard. Principles of natural justice must be observed by the court save where their application is excluded expressly or by necessary implication. It is un-procedural for a court to give judgment against the defendant without giving him an opportunity of being heard. **Every judicial or quasi-judicial tribunal must apply the fundamental principles of natural justice and natural justice will not allow a person to be jeopardized in his person or pocket without giving him an opportunity of appearing and putting forward his case.** The issue of denial of the right to a hearing is a point of law which underline the proceedings the effect of which is to render a proceeding a nullity.

**In the case of Ridge Vs. Baldwin** [1963] 2 All ER 66, it was insisted that the consequence of the failure to observe the rules of natural justice is to render the decision void and not voidable. Official of the court must comply with the rules of natural justice when exercising judicial functions. Right to be heard was insisted in the case of **Kijakazi Mbegu and five others Vs. Ramadhani Mbegu** [1999] TLR 174. Where court held that.

For interest of justice, and right of applicant to be heard in revision number 11/2019, application is granted. Counter affidavit in revision

number 11/2019 to be filed today before 3.30 PM and serve respondent counsel today before 5 PM. Ordered accordingly.



Z.G.Muruke

**JUDGE**

23/11/2020

Ruling delivered in the presence of Joice Kasolo for applicant and Kitua Kinja for respondent.



Z.G.Muruke

**JUDGE**

23/11/2020