

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 172/17 OF 2019

RAMADHANI KIPANGA..... 1ST APPLICANT
SUGU KIPANGA..... 2ND APPLICANT

VERSUS

PETER PETER JUNIOR 1ST RESPONDENT
MWINYIHIJA AYUBU JEMBE..... 2ND RESPONDENT

**(Application for extension of time from the Ruling and Drawn Order
of the High Court of Tanzania, (Land Division) at Dar es Salaam)**

(Mzuna, J.)

Dated the 27th Day of April, 2018

in

Misc. Land Application No. 123 of 2017

RULING OF THE COURT

22nd & 30th July, 2019

KEREFU, J.A.:

The applicants herein have lodged this application seeking for orders of extension of time to lodge an appeal against the Ruling and Drawn Order of the High Court of Tanzania (Land Division), at Dar es Salaam, (*the High Court*), (Mzuna, J) dated 27th April, 2018 in *Misc. Land Application No. 123 of 2017*. The application is brought by way of Notice of Motion lodged on 09th May, 2019 under Rule 10 of the Tanzania Court of Appeal Rules, 2009, (*the Rules*). The Application is supported by the joint

affidavit of the applicants. In principle the application is based on one ground that:- *“There is illegality in the decision delivered by the honourable Judge Mzuna on 27th April, 2018.”*

The application has, however, been resisted by the respondents and they have raised two points of preliminary objection to the effect that, the:-

- (a) application is bad in law as the applicants names have been appeared as appellants; and*
- (b) Notice of Motion does not show grounds the erred by Judge of the High Court to be challenged in this honourable appellate Court.*

On 22nd July, 2019 when the matter was called on for hearing, parties appeared in their personal capacities, without legal representation. The first and second respondents informed me that, after going through the points of preliminary objection they had since raised, have decided to withdrawal the same to allow the matter to proceed on merit. They, as such, prayed for the said preliminary objection to be marked withdrawn. Since the prayer by the first and second respondents was not objected to by the applicants, I granted the same forthwith and marked the preliminary

objection raised by the respondents withdrawn and I then proceeded to consider the substance of the application.

At the hearing of the application and when the applicants were given an opportunity to elaborate on the ground contained in the Notice of Motion, they only opted to fully adopt the Notice of Motion and the affidavit without further elaboration. They prayed for the application to be granted.

In response, the first respondent argued that, the ground for extension of time, as indicated in the Notice of Motion is illegality contained in the impugned Judgement, but he said, the alleged illegality was not specified, as required by Rule 48 (1) of the Rules. He emphasized that the applicants were required to show and specify the said illegality to enable the respondents and the Court to appreciate the same. It was his further view that, since the applicants have not complied with the requirement of the law, the application should be dismissed with costs.

The second respondent did not have much to add, but only supported the submission made by the first respondent.

Having heard the brief submissions made by the parties and thorough perused the record of the application, the remaining task before

me to resolve is *whether the applicant has submitted good cause for the delay to warrant grant of this application.*

Pursuant to Rule 10 of the Rules, an application of this nature can be granted if the applicant has given good cause for the delay. For avoidance of doubt, I think it is instructive to extract the said Rule in full. Rule 10 provides that:-

*“the Court may, **upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal**, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.” [Emphasis added].*

Under the above cited provision of the law, the requirement which the applicant has to satisfy is to show good cause for the delay in filling the application. There are numerous authorities to this effect and some of them include, **Kalunga & Company Advocates Ltd Vs National Bank of Commerce Ltd** (2006) TLR 235 and **Attorney General V Tanzania**

Ports Authority & Another, Civil Application No. 87 of 2016 at pg 11, to mention but a few.

In exercising its discretion to grant extension of time, the Court considers the following crucial factors; *the length of delay, the reason for the delay and degree of prejudice that the respondent may suffer if the application is granted*. It is therefore the duty of the applicant to provide the relevant material in order for the Court to exercise its discretion. See the **Regional Manager Tan Roads Kagera v Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007, (unreported).

It has also been held in many times without number that, the ground alleging illegality constitutes a good cause for extension of time. Among the decisions include, **Principal Secretary Ministry of Defence and National Service Vs Divram P. Valambhia** (1992) TLR 387; **Kalunga**, (supra) and **Arunaben Chaggan Mistry Vs Naushad Mohamed Hussein & 3 Others**, Civil Application No. 6 of 2016, (Arusha) (Unreported).

Now, in the application at hand, the only ground submitted by the applicants in the Notice of Motion is on the alleged illegality contained in

the impugned decision. However, and as clearly submitted by the first respondent, the said illegality was not demonstrated. It is the principle of the law that the alleged illegality should be vividly seen and clearly demonstrated in the supporting affidavit. I have since perused all paragraphs in the applicants' affidavit and observed that, apart from giving the chronological account on what transpired, there is no single paragraph in the said affidavit, which tried to demonstrate or even highlight clearly on the said illegality. It is therefore clear that, the applicants have completely failed to indicate prima facie facts as to how the said decision of the High Court is tainted with the said alleged illegality. The Court in the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010, (unreported) made the following observation:-

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises point of law should, as of right, be granted

*extension of time if he applies for one. The Court there emphasized that **such point of law must be that of sufficient importance and, I would add that, it must also be apparent on the face of the record**, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process” [Emphasis supplied].*

Again, in **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015, (unreported) the Court emphasized that, **the illegality in the impugned decision should be clearly visible on the face of record**. [Emphasis added].

Applying the foregoing principle to the application at hand, I am not persuaded that the alleged illegality is clearly apparent on the face of the impugned decision. To that end, I must conclude that the applicants have not demonstrated any good cause that would entitle them extension of time. In the result, this application fails.

In the event, it is my finding that the applicants herein have failed to advance good cause to justify the grant of extension of time.

Consequently, the application is without merit and is accordingly dismissed with costs.

It is so ordered.

DATED at DAR ES SALAAM this 25th day of July, 2019.

R. J. KEREFU
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



S. J. Kainda
S.J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL