

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 150/01 OF 2018**

**IGNAS SIMPLE KIYANGA.....APPLICANT**

**VERSUS**

**WAVUMO.....RESPONDENT**

**(Application for extension of time to file an application for  
Revision against the Judgment and Decree of the High Court of  
Tanzania, at Dar es Salaam)**

**(Mwakipesile, J.)**

**dated the 19<sup>th</sup> June, 2014**

**in**

**Civil Appeal No. 119 of 2011**

**RULING**

9<sup>th</sup> & 16<sup>th</sup> April, 2019

**SEHEL, J.A**

This is a ruling on an application for extension of time within which to lodge an application for revision against the decision of the High Court in Civil Appeal No. 119 of 2014. The application is made under Rule 10 of the Court of Appeal Rules, 2009 (The Rules) and it is supported by the affidavit of Ignas Simle Kiyanga (the applicant).

The background information to the application is that the applicant who was aggrieved by the decision of the Resident Magistrate Court filed an appeal to the High Court. On 19<sup>th</sup> June, 2014 the appeal was dismissed with no order to costs. Eight months later, the applicant filed his revision at the Court of Appeal and on 13<sup>th</sup> September, 2016 it was struck out for being time barred. Still in need to seek for revision, on 27<sup>th</sup> April, 2018 the applicant has lodged the present application for extension of time.

When the application was called on for hearing, the applicant appeared in person without any legal representation and the respondent was absent despite being duly served. In terms of 63 (2) of the Rules, the applicant was allowed to proceed ex parte against the respondent.

The applicant being a layperson opted to fully adopt his affidavit and submission earlier filed. He then briefly highlighted that he has preferred the present application because he wants the Court of Appeal to revise the proceedings and decision of the High Court. He argued that he filed his memorandum of appeal at the High Court but the Appellate Judge drew its own issues instead of considering his grounds of appeal. He therefore wants the Court of Appeal of Tanzania to be satisfied on the propriety of

the procedure adopted by the High Court which he believed the procedure adopted is irregular and illegal.

The applicant deposed at Paragraphs 3, 4, 5, and 6 of his affidavit in support of the application for extension of time the following:

*"3. That after filing memorandum of appeal there was no written reply from the respondent and even during the hearing of appeal respondent did not respond to the grounds of appeal one after another but the learned Judge when delivered Judgment respond to grounds of appeal seriatim as if he was very the respondent.*

*4. That the learned Judge based his finding in extraneous matters as it was very well confirmed that I was unlawfully terminated as a thief and the case was about defamation.*

*5. That the records of the case has crystal clear irregularities as the case is concerning defamation while the decision is concerning labour dispute.*

*6. That the intended application has exceptional circumstances to be addressed by this court as my first*

*application was struck out by this court for being out of time."*

From what is deposed in the affidavit of the applicant, it is obvious that illegality and time taken to pursue his revision are the main reasons relied upon by the applicant to seek extension of time. The relevant factor for consideration in an application for extension of time under Rule 10 of the Rules is good cause for the delay. In the case of **Mumello v. Bank of Tanzania** [2006] E.A 227 it was held:

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

There is no statutory interpretation of what amounts to sufficient or good cause. Case laws developed numerous factors to be considered as to what constitutes good or sufficient cause. For instance, in the case of **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006

CA (Unreported) an illegality was considered to be within the ambit of the term "good cause". It was held:

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."*

Later in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) illegality was qualified that when raised, it must be apparent on the face of it. It should not be drawn out from the long process of reasoning. It was stated:

*"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in Valambhia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points 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 be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process."*

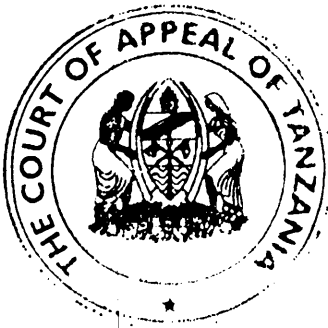
Applying the above to the matter at hand, it is not disputed that the applicant was present at the hearing of his appeal. The applicant is not complaining about the jurisdiction of the Appellate Court. The applicant is also not complaining about fundamental right of being heard. His main complaint is that the Appellate Judge took into account extraneous matters in determining his grounds of appeal such that the Appellate Judge determined his case as a labour dispute while his case was on defamation. It thus clear that the complaint of illegality advanced by the applicant is derived from the long process of reasoning that though he was unlawfully terminated as a thief but his case was about defamation (see paragraph 4 of his affidavit). Illegality here is not patent or self-evident on the face of it. It is only discovered by way of arguments. His long drawn process of argument that the Appellate Judge arrived to a different conclusion than he expected does not make his application of sufficient importance. I therefore see no merit on the alleged illegality.

discretionary powers. Consequently, I do hereby dismiss the application with no order to costs as the respondent was absent. It is so ordered.

**DATED** at **DAR ES SALAAM** this 9<sup>th</sup> day of April, 2019.

B.M.A SEHEL  
**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**