

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**CIVIL APPLICATION NO. 641/01 OF 2022**  
**REGNOLD GEORGE MALYI ..... APPLICANT**  
**VERSUS**  
**JAZIRA ATHUMANI NGULUKO ..... RESPONDENT**  
**(Application for Extension of time to file revision of the order of the**  
**High Court of Tanzania at Dar es Salaam)**  
**(Miyambina, J.)**  
**dated the 24<sup>th</sup> day of September, 2020**  
**in**  
**Civil Application No. 658 of 2019**

.....

**RULING**

13<sup>th</sup> & 23<sup>rd</sup> November, 2023

**ISSA, J.A.:**

This is an application made by way of notice of motion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) seeking extension of time to file an application for revision of the judgment and decree of the Resident Magistrate Court at Kisutu, Dar es Salaam (Hamza, SRM) dated 2.11.2018 in Matrimonial Cause No. 32 of 2017. The application is supported by an affidavit sworn by Regnold George Malyi, the applicant.

Before getting down to the determination of the matter, I find it appropriate to narrate the factual background to the present application. The factual background goes thus: the respondent sued the applicant at Kisumu Resident Magistrate Court vide Matrimonial Cause No. 32 of 2017 which was finally determined on 2.11.2018. The applicant, being aggrieved by that decision, appealed to the High Court (Mutungi, J) in Civil Appeal No. 35 of 2019 which was dismissed for being time-barred. Upon dismissal, the applicant filed at the High Court (Mutungi, J) an application for extension of time to appeal in Misc. Civil Application No. 343 of 2019. The application was dismissed on 14.11.2019. Undaunted, the applicant filed, at the High Court (Miyambina, J), an application for leave to appeal to this Court which again was dismissed on 24.9.2020.

Still aggrieved, the applicant filed to this Court a second bite application for leave. Before the Court the parties conceded that the application contained an error because the High Court did not determine the application for leave on merit. It did not specifically refuse to grant leave to entitle the applicant to a second bite application for leave. The applicant, conscious of the error, withdrew the application and the Court marked it withdrawn on 19.8.2022. The

applicant then, on 18.10.2022, filed this application for extension of time to apply for revision to challenge the decision of the High Court.

At the hearing of the application the applicant was represented by Ms. Batilda Mallya, Mr. Makubi Kunju and Mr. Elinas Kitua, learned advocates whereas the respondent was represented by Mr. Stanslaus Ishengoma, learned advocate. Ms. Mallya, learned advocate for the applicant, adopted the contents of the notice of motion, and the affidavit of the applicant. She submitted that the applicant wants to challenge the decision of the High Court which wrongly determined an application for leave. In fact, the High Court exceeded its jurisdiction and gave a ruling on the merits of the appeal instead of granting or refusing the leave to appeal.

Ms. Malyi, added that they have spent most of the time in court, hence, there is a technical delay. Once the application for leave was dismissed, she argued, they lodged a second bite application which they withdrew after discovering the error. But they promptly filed this application for extension of time within which to apply for revision. She cited various cases of this Court to support her argument, namely: **Benedict Mumelo v. Bank of Tanzania**, Civil Appeal No. 12 of 2002, **Jehangir Aziz Abdulrasul and 2 Others v. Balozi Ibrahim**

**Abubakar and Another**, Civil Application No. 265/01 of 2016, and **Filson Mushi v. Jitegemee Saccos Ltd** (all unreported).

Mr. Ishengoma, on the other hand, submitted on the point of law as he did not file an affidavit in reply. He submitted that in an application for extension of time the applicant is required to account for each day of the delay. In this case, the Court marked the second bite application withdrawn on 19.8.2022, but this application for extension of time within which to apply for revision was filed on 18.10.2022. This period has not been accounted for. He prayed for the Court to consider this.

In the rejoinder, Ms. Mally submitted that when there is illegality on the matter which is subject of appeal the counting of the days of delay is not strictly applied. She urged me to grant the extension of time in the interest of justice.

I shall now proceed to determine the matter on the basis of the arguments and legal principles raised. The application was brought under Rule 10 of the Rules which empowers the Court to grant extension of time. It has been stated in various decisions of this Court that the power of the Court to extend time under rule 10 of the Rules, is both broad and discretionary. The discretion is judicial and it must

be exercised according to the rule of reason and justice and not according to private opinion or arbitrarily. See **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christians Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

Further, the power under Rule 10 is only exercisable if good cause is shown. Whereas there is no universal definition of what constitutes good cause, in exercising its discretion under the said Rule, the Court is bound to consider the prevailing circumstances of the particular case and should also be guided by a number of factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged. This position of law has been restated by the Court in a number of cases including; **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] T.L.R. 387 and **Lyamuya Construction Co. Ltd** (supra).

In this application there are two issues to be determined. One, is the illegality of the decision sought to be challenged, and two, is

the length of the delay and whether that delay has been accounted for.

Starting with the issue of illegality, the law is very much settled.

**In VIP Engineering and Marketing Limited v. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006 (unreported) this Court stated:

*"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes "sufficient reasons" within the meaning of Rule 8 of the Rules for extending time."*

The Court in **Lyamuya Construction** (supra) has further expounded that such point of law must not only be of sufficient importance but must also be apparent on the face of the record; not one that would be discovered by a long-drawn argument or process. In this case, the illegality is clear on the face of the record that the learned judge did not determine the application for leave on merit. He did not grant or refuse the application for leave to entitle the applicant to apply for leave on a second bite. Therefore, the illegality is found on the face of the record.

The second issue is to determine the length of the delay, whether the applicant has accounted for each day of the delay, and whether the delay is ordinate. In this case the applicant withdrew the second bite application for leave on 19.8.2022 and the application before this Court for extension of time within which to apply for revision was filed on 18.10.2022, after 61 days.

The applicant has not accounted for this delay and, as we have held in our numerous decisions, a delay of even a single day must be accounted for to enable the court exercise its discretion in the applicant's favour. Confronted with a similar application, in **Sebastian Ndaula v. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014 (unreported), the Court made the following observation:

*"... The position of this Court has consistently been to the effect that in an application for extension of time, the applicant has to account for everyday of the delay..."*

The issue now is, whether a claim of illegality suffices to extend time regardless that reasonable explanation has not been given accounting for the delay. I am of the settled mind that due to the illegality found on the face of the record extension of time should be

granted. Accordingly, and for the stated reasons, I grant the application and I order the intended application for revision to be lodged within 60 days of the delivery of this ruling. Costs to be on the cause.

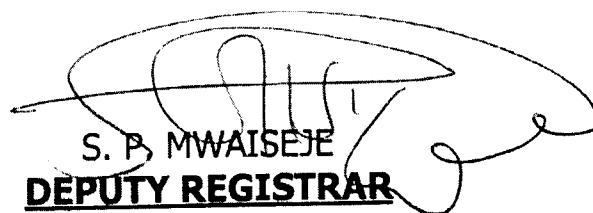
It is so ordered.

**DATED at DAR ES SALAAM** this 21<sup>st</sup> day of November, 2023.

A. A. ISSA  
**JUSTICE OF APPEAL**

The Ruling delivered this 23<sup>rd</sup> day of November, 2023 in the presence of Mr. Elias Kitua, learned Counsel for the Applicant, and also holding brief for Mr. Stanslaus Ishengoma, learned counsel for the Respondent is hereby certified as a true copy of the original.



  
S. P. MWAISEJE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**