

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 657 OF 2016**  
**NATIONAL MICROFINANCE BANK PLC ..... APPLICANT**  
**VERSUS**  
**MUSTAFA LYAPANGA MSOVELA ..... RESPONDENT**  
**RULING**

**ARUFANI, J.**

The applicant filed in this court an application under section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2002 asking the court to extend time within which to appeal to the court out of time. An affidavit sworn by Mr. Daibu Kambo, learned counsel for the applicant is accompanying the application. On the other hand, Mr. Gerald Sagamaganga, learned advocate for the respondent sworn an affidavit in reply to oppose the application.

Submitting in support of the application, Mr. Kambo argued that, the applicant is seeking for extension of time to challenge the ruling and drawn order of the Resident Magistrate's Court of Dar es Salaam given in civil case no. 174 of 2014 which was delivered on 28/1/2016. The learned advocate elaborated in his written submission that, the trial magistrate delivered what was termed as judgment on admission on ground that, the applicant has admitted all the allegations raised by the respondent while there is no judgment on admission composed by the trial magistrate. He

stated that, when he applied for the copies of judgment and decree to that effect, there was none in the record.

He stated to have written another letter asking to be supplied with the copies of the ruling and drawn order. On 26/6/2016 he was supplied with the said copies but he discovered that, there was typing errors and asked for the correction. He added that, the correction took long time which resulted into their delay to appeal within the time. He added that, the proceedings were tainted with illegality and it is a rationale behind seeking for extension of time to enable the court to ascertain the existence or otherwise of the alleged illegality. The learned advocate submitted further that, once time is extended the court will be in a position to deal with the alleged illegalities to meet the end of justice.

The respondent's submission was prepared by Mr. Joseph Assenga, learned advocate. He argued that, the applicant's submission is based on merit of the intended appeal instead of reasons for the delay which would have warranted the court to grant extension of time. He submitted that, in fact the applicant in his affidavit stated to have applied for certified copies of proceedings, ruling and drawn order. He argued that, he knew what was contained in the court file and that is why he applied for the same. He challenged the contention that he asked for the judgment and decree. The learned advocate submitted further that, the allegation that the documents in question were ready for collection by 26/6/2016 is not true because they were duly signed and certified by presiding magistrate on 18/3/2016. The learned advocate referred the court to the case of **Yusuph Same & another V. Hadija Yusufu** Civil Case No. 1 of 2002 and argued that, the ingredients for extension of time is sufficient reason for

the delay. He added that, the present application was filed in court on 29/9/2016 about nine months from the date of decision in absence of valid explanation for the delay.

Moreover, the learned advocate argued that there is lack of diligence on the part of the applicant. He argued that, from the event it appears that, the applicant was not serious and diligent in pursuing his right to appeal. He submitted that, the applicant has spent a considerable time alluding intended appeal has chances of success on ground of illegalities. He stressed that, the applicant must demonstrate some sufficient reasons outside his control which disabled them in filing the appeal in court within the time and not otherwise. He added that, illegality is not and cannot be misfortune outside the applicant's power to prevent him from filing the appeal within time. At this end, he argued that the applicant has miserably failed to demonstrate sufficient cause to warrant extension of time to appeal. Therefore he prayed for the dismissal of the application with costs.

In his rejoinder the learned counsel for the applicant stated that, it is not true that he has submitted on the merit of the intended appeal instead of giving the reason that amount to sufficient cause for the delay but he has submitted on the fact constituting illegalities as a prime reason for the court to grant extension of time. He stated further that, though the ruling of the trial court shows the ruling was certified by the Honourable trial Magistrate on 18/3/2016 but the drawn order is neither bears the date of being extracted nor date of being certified. He submitted that, failure by the trial court to supply the ruling and the drawn order on time was the cause for the applicant's delay to lodge the appeal in court within the time.

The application before the court is for extension of time to file appeal out of time. The question to determine is whether the applicant has advanced sufficient reason to warrant the court to extend the time in his favour. The reason is to be found in the affidavit in support of the application together with annexures thereto. The main reason adduced in the affidavit is that the applicant's delay is a result of getting the necessary document out of time. The ruling of the trial court was pronounced on 28/1/2016 and as stated at paragraph 3 of the affidavit Mr. Kambo deposed that, the applicant applied for copies of the ruling and drawn order and managed to get the same on 26/6/2016. Again under paragraph 4 he testified that, after receiving the said documents the applicant discovered that, the same is tainted with typing error and they returned the same to the court for correction.

Annexure NMB 2 to the affidavit is alleged to be a letter used to apply for the necessary copies and the exchequer receipt. However, the stated exchequer receipt is not annexed to exhibit NMB 2 as alleged. This letter was written on 5/2/2016 but was received in court on 24/2/2016. It is not stated in the affidavit of the applicant's counsel nor in his submission as to why the letter took all those days to reach the trial court. Further to that, the applicant's learned counsel has stated that, the applicant received the copies on 26/6/2016 and the present application was filed in court on 29/9/2016.

Although the applicant alleges there was some errors on the documents, he has neither stated what errors were in the drawn order nor accounted for the days lapsed from the moment he received the copies up to when the application was filed in this court. In addition to that it has not been stated when the drawn

order was returned to the trial court for correction and when the corrected copy was issued to the applicant. The rule of the game in application for extension of time is that, there must be sufficient reasons for each day of delay, and failure to do so the application is bound to fail.

There are numbers of authorities to that effect, see for example **Yusuph Same & Hawa Dada V. Hadija Yusuph** Civil Appeal No. 1 of 2002 (CAT) (Unreported) where the Court of Appeal held that, although extension of time is entirely on the discretion of the court, but the discretion of the court must be exercised judicially and the overriding consideration is that, there must be sufficient cause for so doing. Despite the fact that the applicant has not accounted for each day of the delay as demonstrated hereinabove but he has alleged there is an illegality in the decision the applicant is intending to appeal against if extension of time to appeal out of time will be granted.

The court has found that, as rightly argued by the counsel for the applicant the position of the law where there is an allegation that there is an illegality in the decision intended to be challenged the court is required to grant extension of time for the appeal to be filed in court out of time so that the alleged illegality can be looked and corrected if it will be established. This was held so in the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambli** [1992] TLR 182 at page 189 cited in the submission of the learned counsel for the applicant where it was stated that:-

*"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the*

*purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measure to put the matter and the record straight."*

The similar position was observed in the Case of **TanESCO & 2 others V. Salum Kabora**, Civil Application No. 68 of 2015 referred in the submission of the learned counsel for the applicant where the Court of Appeal stated that:

*"Where there has been a contention of illegalities on the decision intended to be challenged as it has been in the case in the instant application, the legal trend has been for the court to grant the sought extension of time, to pave way for the alleged illegality to be deliberated by the court."*

In the light of the above stated position of the law the court has found that, despite the fact that the applicant has not accounted for some days of the delay but as the applicant has alleged there is an illegality in the decision they are intending challenge it is proper for the court to exercise its discretionary powers to grant the application so that the alleged illegality can be deliberated by the court for the purpose of putting the record of the court right. In the upshot the application is granted and the applicant is given thirty days from the date of this ruling to file the appeal in court. Each party to bear his own costs.

Dated at Dar es Salaam this 30<sup>th</sup> day of April, 2018

  
**I. ARUFANI**

**JUDGE**

**30/04/2018**