

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. APPLICATION NO. 42 OF 2019

(Originating from Civil Revision No. 19 of 2017)

JOSEPH ERNEST MANGUKU & 31 OTHERS.....APPLICANTS

VERSUS

INTERNATIONAL SCHOOL OF TANGANYIKA.....RESPONDENT

RULING

Date of last Order: 05/12/2019

Date of Ruling: 16/12/2019

MLYAMBINA, J.

This application has been brought under *Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 (R.E 2002)*. The applicants are seeking for extension of time within which the applicants may file on application for leave to appeal to the Court of Appeal of Tanzania against the decision dated 4th December, 2018.

The application has been supported with an affidavit of Samwel Gilbert Ndaga, an advocate representing the applicants. There are three main reasons advanced by the applicant in the supporting affidavit and in their submissions. Paragraph 6 7 and 8 of the affidavits reads:

"6. The applicant could not file within time the application for leave to appeal to the court of appeal of Tanzania at Dar

es salaam against the Civil Revision No. 19 of 2017 due to the fact that they were not supplied with the judgement and decree within time. Besides, they did not sit idle, they made follow-ups until 28th December, 2018 when he obtained ruling and proceedings from this court.

7. That, the applicant is suffering from financial hardship which also caused her to delay in filling within the prescribed time the application for leave to appeal to the Court of Appeal of Tanzania at Dar es salaam against the Civil Revision No. 19 of 2017 of this Honorable Court, for he could not afford to engage an advocate to take necessary steps concerning the case.

8. That, the decision of this Honorable Court in Civil Revision No.19 of 2017 dated 4th December, is tainted with illegality.

There is no dispute between the parties herein that for the court to grant an extension of time for a certain action, there are must be sufficient reasons. In the cited case of *Benedict Mumello V. Bank of Tanzania Civil Appeal No. 12 of 2002 Court of Appeal of Tanzania Dar es Salaam* (unreported) the court observed:

"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."

In the instant matter, the applicants requested for the copy of decision on 5th December, 2018. The copy of Ruling was issued on 4th December, 2018. There is no good reason as to why the applicants were not in a position to obtain the copy of ruling until 28th December, 2018 because the same copy was signed on 4th December, 2019.

Even if I may agree with the applicants that they made follow up of the copy of decision unsuccessfully, there are no good reasons as to why the applicants remained docile up to 23rd January, 2019 when they lodged this application.

The applicants have advanced a reason that they were suffering economic hardship. As replied by the respondent, the issue of financial constraint is not a sufficient reason for extending time. In the case of *Wambele Mtumwa Shahake v. Mohamed Hamis, Civil Reference No. 8 of 2016 Court of Appeal of Tanzania Dar es Salaam* (unreported) the court observed:

"As regards the issue of financial constraint, again that is not a sufficient reason for extending the time as was held in the case of Yusufu Same and Another v. Hadija Yusufu, Civil Appeal No. 1 of 2002 where the court stated as hereunder "

"We are aware that financial constraint is not a sufficient ground for extension of time see Zabitis Kawuka v. Abdul Karim (EACA) Civil Appeal No. 18 of 1937 page 11)"

Even if I may agree with the applicants that the delay was caused by financial hardship, the applicants have not accounted for each day of delay. There are no good reasons stated as to where were the applicants from 28th December, 2018 up to 23rd January 2019. It is not stated as to when the applicants got money to engage an advocate. Even if stated, it adds no value because the applicants were not forbidden to procure legal aid.

The applicants have relied on the ground of illegality of the impugned decision. The respondent on the other hand has objected that ground because the alleged illegality is not apparent on the face of the records.


I do entirely agree with the respondent that the applicants in their paragraph 8 of the supporting affidavit did not point out the details of the alleged illegality.

In the case of *Omary Ally Nyamalege (as the Administrator of the Estate of the late Seleman Ally Naymalege) and Others v. Mwanza Engineering Works*, Civil Application No. 98/08 of 2017, court of Appeal of Tanzania observed:

"Applying the above settled position to the instant application, I have no difficulty in holding that the applicant's contention that the decision sought to be challenged is fraught with illegalities is nothing but an unsubstantiated general complaint. Without the details of the alleged illegalities, it is impossible to determine whether the said illegalities are apparent on the face of the record and that they are of sufficient importance to merit the attention of this court."

The court is of further view that, even if it can agree there are illegality on the impugned decision, illegality is subject to diligence. (See the case of *Eiennes Hotel v. National Housing Corporation*, Civil Reference No. 32 of 2005 Court of Appeal of Tanzania).

In the circumstances of the above the application is dismissed for lack of sufficient cause. Taking into account of the nature of the case, let costs be shared. It is so ordered.



Y. J. MLYAMBINA
JUDGE
16/12/2019

Ruling delivered and dated 16th day of December, 2019 in the presence of the applicants and Advocate Mariam Saidi for the respondent.



Y. J. MLYAMBINA
JUDGE
16/12/2019