

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 712 OF 2018

*(Arising from the decision in Civil Case No. 206 of 2011 of this Honorable Court, Hon.
Mkasimongwa Judge, dated 02nd January 2018)*

TARIMBA ABBAS.....APPLICANT

VERSUS

THE GUARDIAN LIMITED.....1ST RESPONDENT

THE EDITOR, TAIFA LETU NEWSPAPER.....2ND RESPONDENT

RULING

Last order date: 05/11/2019

Date of Ruling: 03/12/2019

MLYAMBINA, J.

This is an application for leave to appeal to the Court of appeal of Tanzania. The application has been made *under Section 11 (1) of the Appellate Jurisdiction Act, cap 141 (R.E 2002)*

It is indisputable valid that the applicant herein lodged Civil Case No. 206/2011 before this court against the respondent. The suit was struck out by this court on 2nd January, 2018. Being dissatisfied, the applicant lodged a notice of appeal on 29th January, 2018.

The applicant filed Misc. Civil Application No 52 of 2018 seeking for leave to appeal to the court of appeal on 31st January, 2018. The

same application was struck out on 26th September, 2018. Hence, this application.

The issue before the court are; *whether the applicant has advanced sufficient reason for the delay; and whether the applicant has accounted for each day of delay.*

The application at hand was filed on 12th day of November, 2018. In the supporting affidavit of the applicant there is no good reason to account for the delay from 26th September, 2018 when his application was struck out to 12th November, 2018 when this application was filed.

It is an established legal principle that each delay must be accounted for the court to grant an extension of time. (See the case of *Jacob Shija v. M/S Regent Food and Drinks Ltd and Mwanza City Council*, Civil Application No. 440/08 of 2017.

The applicant has further advanced the point of illegality of the impugned decision. To that effect, the applicant cited three authorities. One, *Principal Secretary Ministry of Defence and National Service v. Devram Valambhia* (1992) TLR 182, in which the Court of Appeal of Tanzania had these to say:

"in our view when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even

it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right”

The other authority was the case of *Amour Habib Salim v. Hussein Bafagi*, Civil Application No. 52 of 2009 (unreported) at page 5 in which it was observed that; once the plea of illegality is alleged to exist in the decision to be challenged, the court should find it as sufficient reason for extending time so that it may be in a proper forum to address the anomaly if all exists.


The third authority was the case of *Educational Books Publishers Ltd v. Hasham Kassam and Sons Ltd and 3 others*, Commercial Case No. 5/2011 (unreported) where this honorable court concluded that; for interests of justice, the court cannot strike out nor dismiss the suit upon expiration of the scheduled speed truck.

As replied by the respondent, the point of illegality is the good ground of extension but it is subject to diligence. (See the case of *Etiennes Hotel Ltd v. National Housing Corporation*, Civil Reference No. 32 of 2005 Court of Appeal of Tanzania.

I may wish to comment to the applicant say that the court cannot strike out nor dismiss the suit upon expiration of the scheduled truck, is subject of various thoughts.

The reason is that speed trucks under order VIIIA and VIIIB are meant for a purpose. There are not for decoration purposes. If the speed truck expires and there is no any application made to vary or extend it, an appropriate order of striking the suit must be issued.

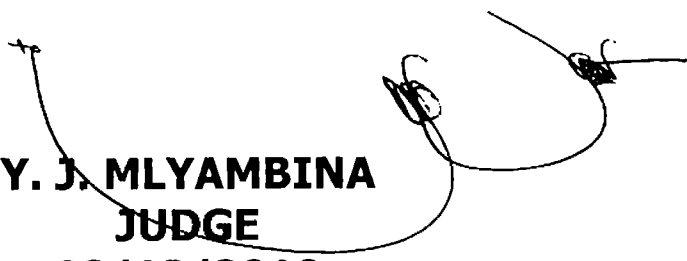
In the end, I hereby dismiss this application with costs for lack of sufficient cause. It is so ordered.



Y. J. MLYAMBINA
JUDGE
03/12/2019

COURT

Ruling delivered and dated 3rd day of December, 2019 in the presence of Nyenyembe Crispinus holding brief of Frank Chundu Advocate, for the applicant and Emmanuel Hando holding brief of Michael Ngalo Advocate for the respondent.



Y. J. MLYAMBINA
JUDGE
03/12/2019