

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

MISC CIVIL APPLICATION NO. 47 OF 2021

(Arising from Execution No. 24 of 2017)

JULIUS BIIKA LUTAINULIWA.....1ST APPLICANT

JOHNMARY JULIUS LUTAINULIWA.....2ND APPLICANT

VERSUS

CITY MORTGAGE AND FINANCE CORP.

LTD..... RESPONDENT

R U L I N G

Date of last order: 20/10/2021

Date of Ruling: 26/11/2021

MGONYA, J.

This is an application for extension of time to appeal out of time against the Judgement of this Court. The application has been moved by a Chamber Summons under **section 14 (1), of the Law of Limitation Act, Cap. 89 [R. E. 2019]** supported by an affidavit sworn by the 1st Applicant.

The Application was resisted through the counter affidavit by the Respondents, herein hence scheduled for hearing. The Applicants were represented by Mr. Samuel Shadrack, and the Respondent enjoyed the services of Mr. Harry Mutalanya learned counsel. The Applicants moved this Honorable Court for the following orders that:

- 1. That this Honorable Court may be pleased to extend time to appeal out of time on order delivered on 28th March 2018;***
- 2. Costs; and***
- 3. Any other relief (s) this Court deems just to grant.***

On 23/6/2021, this Honorable Court granted the prayer that the application be disposed off by way of written submissions.

In support of this Application, the Applicants contended that the judgement being hanged on illegality they sought for extension of time to challenge the same which emanated from illegal Loan Agreement. The Applicants referred this Court to the case of ***GRAND REGENCY HOTEL LIMITED vs PAZI ALLY & 5 OTHERS***, Civil Application No. 100/01 of 2017, stated that:-

"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"

Basing on the above legal stand, the Applicants prayed this application be granted by extending time to appeal out of time to challenge the illegalities in the Judgement.

The Respondent challenged the Application by submitting that, the Applicants has not raised any reason for delay to file the intended appeal rather than illegality as ground for their application to be granted. In support of objecting the Application, the case of ***CHRISMASI ELIMIKIA SWAI AND 2 OTHERS vs. TANZANIA ELECTRIC SUPPLY CO. LTD AND ANOTHER, CIVIL APPLICATION No. 559/01 of 2018 (Unreported)*** which with approval, quoting the decision in the case of ***ABDALLAH SALANGA AND 63 OTHERS VS. TANZANIA HARBOURS AUTHORITY, CIVIL APPLICATION NO. 4 OF 2001 (UNREPORTED)***; was referred to the Court.

I have gone through both parties' pleadings and their respective written submissions as ordered by this Honorable Court. However, it is a trite law that an Application for extension of time is entirely in the discretion of the Court to grant or refuse it. Further, that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. The reasons advanced by the Applicants was that the Judgement contained illegality which renders miscarriage of Justice. **The question now is whether this reason as advanced amounts to good cause?**

In the instant Application, the Court records reveals that the Judgement was delivered on **24/3/2020** and Drawn Order extracted on **6 /4/2018**. This also implies that something went wrong somewhere. However, this Application was lodged in this Honorable Court on **01/2/2021**. The Applicants did not explain in their affidavit as to when they were supplied with the copies of Judgement and Drawn order so as this Court can be able to count days. Therefore, it is from **24/3/2020** to the date of lodging the application which was on **01/2/2021** the period of almost one year and no reasons grounded for that delay.

It is from the above, and since no cause of delay was demonstrated, this Honourable Court will not hesitate to say that there was negligence on the part of the Applicants as they had an advocate who knows the law very well and chose to sleep on their rights to Appeal.

On a very serious note, it come to the knowledge of this Honourable Court through Paragraph 8 of the Applicants' Affidavit that, the Judgment which is subject to Appeal was entered on **admission** to the sum of **Tshs. 30,000,000/=**. If that was the case then, how comes the Applicants wants to challenge the Judgement which was consented? Even if the Applicants are Laymen their Advocate had a duty to advise them accordingly.

From the above explanation, **the Application, the Application at hand is accordingly dismissed with costs for being misconceived and want of merits.**

The Respondent to have his costs, to be borne by the Applicants.

It is so ordered.



L. E. MGONYA

JUDGE
26/11/2021

Court: Ruling delivered in chambers in the presence of Mr. Harry Mwakalasya, Advocate for the Respondent, Appellants absent, and Mr. Richard RMA.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya", is written over the printed name.

L. E. MGONYA

JUDGE

26/11/2021