

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. CIVIL APPLICATION NO.147 OF 2020

(Arising from the Judgment and Decree in Civil Application No. 06 of 2020
at Resident Magistrate Court of Mwanza)

SAGIA KING MASABA APPLICANT

VERSUS

1. EQUITY BANK OF TANZANIA LTD
2. ISANGI AUCTION MART & COURT BROKER } **RESPONDENTS**

RULING

Last Order: 16.03.2021

Ruling Date: 16.03.2021

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 14 (1) of the Law of Limitation Act Cap. 89 [R.E 2019] to extend time within which the applicant files an appeal to this court with respect to Civil Application No.06 of 2020

dated 29th July, 2020. The application is supported by an affidavit deposed by Sagia King Masaba, learned counsel for the applicant. The respondent resisted the application and has demonstrated his resistance by filing a joint counter affidavit deposed by Godfrey Daniel Goyayi, the learned counsel for the respondents.

In prosecuting this application, the applicant enjoyed the legal service of Mr. Madukwa, learned counsel while the respondents enjoyed the legal service of Mr. Goyayi, learned counsel.

Commencing his submission, Mr. Madukwa urged this court to adopt the applicant's affidavit and form part of his submission. Mr. Madukwa stated that they have filed the application of extension of time in order to file an appeal to challenge the Judgment and Decree of the Resident Magistrate Court. He lamented that the Magistrate after dismissing the case he ordered to restructure the loan. The learned counsel for the applicant contended that there is an irregularity as stated in paragraph 3 of the applicant's affidavit. He went to state that the Magistrate erred in law to order settlement of outstanding balance after he dismissed the suit. He urged this court to grant the applicant's prayer to allow the applicant to exercise his constitutional right. To bolster his submission he referred this court to the case of **TBL v**

Herman Bildad Minja, Civil Application No. 11/18 of 2019, the Court of Appeal of Tanzania cited with authority the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (1992) TLR 182.

On the strength of the above submission, Mr. Madukwa beckoned upon this court to grant the applicant's application with costs.

On his side, Mr. Goyayi, conceded with the applicant's application for the reason that the trial court judgment was tainted with irregularity since the suit was dismissed which means there was no any case before the court but the Magistrate proceeded to restructure the settlement. He stated that the Magistrate went into an error. Mr. Goyayi stated that for the aforesaid reasons the applicant's application is meritorious. The learned counsel added that the Magistrate also erred in law to state that mediation was conducted while in real sense mediation was not conducted. Mr. Goyayi further states that for the aforesaid irregularity they find that the higher court should determine the said irregularity.

In conclusion, the learned counsel for the respondent beckoned upon this court to grant the application and costs to follow the event since the applicant has not prayed the same in his chamber summons.

In his brief rejoinder, Mr. Madukwa stated that costs are among the applicant's prayers. Thus he urged this court to grant the application with costs.

Having heard the submissions of the parties, and taking to account that the learned counsel for the respondent conceded to the application and by consent of both parties, it was agreed that the application be granted save for costs. There are a plethora of legal authorities on illegality as a suitable ground for extension of time. As it was decided in numerous decisions of the Court of Appeal of Tanzania. In the case of **Lyamuya Construction Company Limited Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported), the Court of Appeal of Tanzania held that:-

*“ Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view be said that in Valambhia’s case the Court meant to draw a general rule that every***

*applicant who demonstrates that his intended appeal raises points of law **should, as of right, be granted extension of time if he applies for one.** The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction, (but), not one that would be discovered by a long drawn argument or process.”*

Applying the above settled position to the instant application, I had to refer to the applicant's affidavit to find out if there are justifiable grounds of illegality. In paragraph 3 the applicant's affidavit, the applicant has raised an issue of irregularity that the trial Magistrate erred in law to order settlement/ restructuring if outstanding balance after dismissing the entire suit.

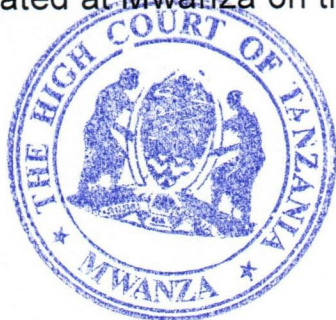
I am in accord with both learned counsels for the respondent that the trial Magistrate was not in a position to issue other orders after dismissing the suit since there was not any pending case before him. In my view, the said illegality is apparent on the face of the record and is of sufficient importance to merit the attention of this court. As it was held in the case of **Moto Matiko Mabanga v Ophir Energy PLC and 2 Others**, Civil Application No.463/01 of 2017, delivered on 17th April,

2019. The same was stressed by the Court of Appeal of Tanzania, that for this ground to stand, the illegality of the decision subject of challenge must clearly be visible on the face of the record, and the illegality in focus must be that of sufficient importance.

Consequently, the applicant's application for an extension of time to file an appeal before this court is granted without costs. The applicant is required to file an appeal within 21 days from the date of delivery of this ruling in exclusion of weekends.

It is so ordered.

Dated at Mwanza on this 16th March, 2021.




A.Z.MGEYEKWA

JUDGE

16.03.2021

Ruling delivered on 16th March, 2021 via audio teleconference whereby Mr. Madukwa, learned counsel and Mr. Goyayi, learned counsel for the applicant and respondent respectively were remotely present.


A.Z.MGEYEKWA

JUDGE

16.03.2021