

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

PC. CRIMINAL APPEAL NO. 11 OF 2020

(Arising from the District Court's decision in Misc. Criminal Application No. 25 of 2019 originating from Criminal Case No. 33 of 2019 before Gallapo Primary Court))

HALIFA YUSUPH APPELLANT

VERSUS

MARIA HAMISIRESPONDENT

JUDGMENT

10/02/2021 & 31/03/2021

GWAE, J.

In the Gallapo Primary court ("trial court") within Babati District, the appellant and respondent named herein were accused person and complainant respectively. The appellant was initially charged with an offence of criminal trespass contrary to section 299 of the Penal Code Cap 16 Revised Edition, 2002.

It was alleged by the complainant now respondent that, the appellant invaded the respondent's parcel of land measuring three acres whereas the appellant strongly contended that the suit allegedly trespassed by him is his own property. In the final analysis by the trial court, the appellant was convicted by the trial court of the offence as charged and was accordingly sentenced to the term of four (4) months imprisonment on the 1st April 2019.

Seemingly, the appellant was not satisfied with the decision of the trial court however he found himself barred with law of limitation that is he was out of thirty (30) days within which he could file his appeal to the District Court. He thus filed an application for extension of time before the District Court of Babati on the 28th October 2019.

The District Court through its decision dated 13th January 2020, dismissed the appellant's application on the ground that there was no sufficient ground or cause for delay that was advanced by the appellant to enable or justify exercise of statutory discretion to grant the appellant's application. Hence this appeal on the following grounds;

1. That, the district court erred in law and facts by dismissing the appellant's application without giving consideration to the naked facts founding and thus justifying the appellant's delay
2. That, the district court erred in law and facts for its failure to count on the illegalities
3. That, the district court erred in law and facts by unwarranted awarding costs for the criminal case.

Parties appeared in person, unrepresented when this appeal was called on for hearing before me and they had nothing substantial to argue this appeal except on the ownership of the piece of land allegedly trespassed by the appellant.

Looking at the grounds of appeal and reasons given for extension of time namely; jurisdictional issue and illegalities, I am satisfied that the appellant's application was grantable in the circumstance of the case as explored earlier for an obvious reason of illegalities leave alone that the issue of sickness that was raised and established by the appellant. In **Joseph Paul kyauka Njau & another vs. Emmanuel Paul Kyauka Njau & another**, Civil application No. 143/05 of 2018 (unreported), Court of Appeal sitting at Arusha where Hon. Madam Justice **Korosso, JA**, in the above cited case went on stating that and I wish to quote part of the holding that;

"..It is clear that the foregoing principle implores courts when considering allegations of illegality, to

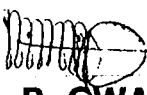
ensure the alleged illegality is of sufficient importance and must be apparent on the face of the record and should not be such that the illegality alleged would need to be sought from a long drawn argument or process”

Having observed that, the issue of jurisdiction is determinable in the case at hand, I feel bound to adhere to the above quoted decision since the appellant raised serious issue of illegality to wit, jurisdiction of the trial court to entertain a criminal trespass case without the issue of ownership being resolved first

For the foregoing reasons, this appeal is meritorious, it is consequently allowed, the District Court’s decision is quashed and set aside. The appellant is given **fourteen (14)** days within which to file his appeal in the District Court of Babati at Babati.

Order accordingly.




M. R. GWAE
JUDGE
31/03/2021