

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.



A handwritten signature in black ink, appearing to read "M. R. Gwae", is written over a horizontal line.

M. R. GWAE
JUDGE
31/03/2021