

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

**CIVIL APPLICATION No. 1 OF 2020**

*(Arising from the District Court of Bukoba at Bukoba in Civil Appeal No. 25 of 2018 & original from the Bukoba Urban Primary Court in Civil Case No. 97 of 2012 of 2018)*

**RAMADHAN SELEMAN NURU ----- APPLICANT**

Versus

**GEOFFREY PROTAS ----- RESPONDENT**

**RULING**

02/03/2021 & 15/03/2021

**Mtulya, J.:**

An Application for enlargement of time to file an appeal out of statutory time was lodged in this court to contest the decision of **District Court of Bukoba at Bukoba in Civil Appeal No. 25 of 2018** originating from the judgment of **Bukoba Urban Primary Court in Civil Case No. 97 of 2012 of 2018**. In order to persuade this court to decide in favour, Mr. Ramadan Selemani Nuru (Applicant) had displayed two (2) reasons of the delay in the Fifth (5<sup>th</sup>) and Ninth (9<sup>th</sup>) paragraphs of his Affidavit, viz: sickness and illegality of the decisions of the lower courts in determining his case.

The Applicant stated in his Affidavit that he was attacked by diabetes disease hence was admitted at Bukoba Government Referral Hospital and had continued with treatment with gradual

recovery. On illegality, the Applicant indicated that the two courts below ordered payment of interest contrary to the agreement between the contesting parties. When the application was scheduled for hearing, the Applicant, who is a lay person, briefly stated that he was out of time because of diabetes disease and illegality and had previously approached this court, but his Application was struck out for incompetence based on legal technicalities.

This submission was protested by Mr. Geoffrey Protace (the Respondent), who is also a lay person, and appeared without any legal representation. The Respondent declined to reply on the two registered claims. However, he stated that the Application be dismissed as it is loaded with lies intended to obstruct his rights. According to the Respondent, even the registered discharge certificate attached in the Application to justify sickness was forwarded to TAKUKURU for investigation which led to filing of **Criminal Case No. 141 of 2020** before the **Resident Magistrates' Court of Bukoba at Bukoba**. In a brief rejoinder, the Applicant submitted that the Respondent's claim of investigation on the authenticity of the certificate and case is mere statements without any proof of summons or court order from the case hence cannot be trusted in court of law.

I have perused the judgment of District Court and found last paragraph in page five to have analysis and reasoning on the subject of interest and proper amount to be paid by the Applicant. The Applicant in this Application seeks enlargement of time to contest enlargement of extra amount of money and its reasoning delivered by the courts below. According to him, courts below were wrong in granting interest to the Respondent hence illegality of the decisions of the courts below.

I think, on my part, there are no pigeon holes so far established in our courts of record for good reasons to justify extension of time to applicants to file their appeals out of time. The practice of this court and the Court of Appeal has been that applicants for extension of time must produce good causes to persuade this court or Court of Appeal to decide in their favor (see: **Oswald Masatu Mwizarubi v. Tanzania Fish Processor Ltd**, Civil Application No. 13 of 2010; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009). In the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd** (supra), the Court of Appeal stated the following words:

*What constitutes **good cause cannot be laid down by any hard and fast rules.** The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant material** in order to move the court to exercise its discretion*

(Emphasis supplied).

On the powers of the court, the Court of Appeal in the precedent of **NBC Limited & Another v. Bruno Vitus Swalo** (supra), it was stated at page 7 of the typed Ruling that:

*It is now settled that **in its discretionary powers, apart from a point of illegality where raised**, the court has to also consider such factors as the length of delay, the reason for delay, the degree of prejudice and whether or not the applicant was diligent. In applying those principles...the general principle that **every case is decided upon its peculiar facts***

(Emphasis supplied).

However, the Court of Appeal on 26<sup>th</sup> September 2007, in the precedent of **VIP Engineering and Marketing Limited & Two Others**

**v. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7, and 8 of 2006, at page 18, stated that:

*It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time...regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay.*

The Court after a detailed analysis and visitation on several other decisions of its own, it came to the conclusion, at page 22 of the precedent, that:

*We have already accepted it as established law in this country that where the point of law at issue is the illegality of otherwise of the decision being challenged, that by itself constitutes sufficient reason for extending time.*

This position had its history since 1992 and was discussed in length in the precedent of **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] TLR 185, leading to similar pronouncements in the decisions of **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016

and **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017. For instance, in the decision of **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016, our superior court in judicial hierarchy stated that:

*It is a settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay.*

Similar wording were recorded a year later in the precedent of **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, the Court at page 11 & 12 of the typed decision stated that:

*We wish to point out that, the Court cannot normally justifiably close its eyes on glaring illegality in any particular case because **it has a duty of ensuring proper application of the laws by the subordinates courts** ...we think, **the superior courts have the additional duty of ensuring proper application of the***

*laws by the courts below... for the interest of justice, the Court has a duty to address a vivid illegality and that cannot justifiably close its eyes thereof.*

(Emphasis supplied).

The reasoning in favour of the position is found in our law reports since 1992 that: *the court of record must take appropriate measures to put the matter and the record right* (see: **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] TLR 185). In the present application there is claim of illegality and precedents of our superior court in situations like the present one are certain and settled. This court cannot hesitate to abide by the precedents delivered by the Court of Appeal and cannot depart even if it thinks right to do so. I think, the Applicant has registered relevant materials to persuade this court to decide in his favor.

Having said so, I cannot be detained determining the reason of sickness for enlargement of time in this Application, although I understand there are precedents decided in favour of sickness as part of sufficient reasons to be positively considered by the court in granting extension of time (see: **Kapapa Kumpindi v. The Plant**

**Manager, Tanzania Breweries Limited**, Civil Application No. 6 of 2010, **Benezeth Mwebesi & Two Others v. Baraka Peter**, Misc. Civil Application No. 46 of 2019 and **Safina Amri v. George Ruhinda**, Misc. Land Application No. 66 of 2018).

I have therefore formed an opinion to grant the Applicant an enlargement of fourteen (14) days leave to file an appeal in this court from today without any further delay, as I hereby do so. Costs in due course.

It is so ordered



F.H. Mtulya

**Judge**

15.03.2021

This Ruling was delivered in chambers under the seal of this court in presence of the Applicant, Mr. Ramadhani Selemani Nuru and in absence of the Respondent, Mr. Geoffrey Protace.



F.H. Mtulya

**Judge**

15.03.2021