

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

PC. CIVIL APPEAL NO. 8 OF 2020

(C/f Misc. Civil Application No. 13 of 2019 Moshi District Court; originated from Civil Case No. Case No. 7 of 2010 at Himo Primary Court)

ALPHONCE MGHALA APPELLANT

VERSUS

PIUS ABIUD TESHA RESPONDENT

27th April & 28th May, 2021

JUDGMENT

MKAPA, J.

This is the second appeal after Alphonc Mghala the appellant, lost in **Misc. Civil Application No. 13 of 2019** before the Moshi District Court at Moshi (district court).

In order to place the present matter in its correct perspective it would be necessary to briefly summarize the facts leading to this appeal. That, before the Himo Primary Court (the trial court) in **Shauri la Madai Na. 7 of 2010** the respondent herein was the applicant. He sued the appellant claiming for shillings fourteen million five hundred thousand (Tshs. 14,500,000/=). The trial court decided in favour in the respondent in 2013. Later, in 2017 the matter proceeded with the execution. The appellant in 2019 filed before the District Court **Misc. Civil Application No. 13**

of 2019 praying for extension of time to file appeal out of time against the decision of the trial court. The District court dismissed the application for want of merit hence this appeal comprising four grounds summarized as follows;

1. That the learned Magistrate erred in law and fact in holding that the reasons for delay in filing appeal against Shauri No. 7/2010 was occasioned by the Appellant without due regard to the fact that the decision was tainted with illegalities which constitute sufficient reason for extension of time.
2. The learned Magistrate erred in law and fact for not considering that the decision of Himo Primary Court in Shauri No. 7/2010 is tainted with illegalities for lack of jurisdiction.
3. That the learned Magistrate erred in law and fact in holding that the applicant ought to have demonstrated that the appeal had overwhelming chances of success.
4. That the learned Magistrate erred in law and fact in failing to note that a decision tainted with illegalities constitutes sufficient reason for granting extension of time regardless of the delay.

When the matter was called for hearing the respondent through his counsel Mr. Musa Mziray learned advocate, did not enter appearance despite being dully served. Thus the hearing

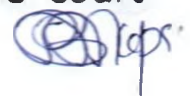


proceeded *Ex-parte* with Mr. Charles Mwanganyi learned counsel appearing for the appellant.

Submitting in support of the appeal Mr. Mwang'anyi prayed to submit jointly the four grounds of appeal to the effect that, the **Civil Case No. 7/2010** delivered on the 26th November 2013 was tainted with illegalities as the claim amounted to shillings fourteen million five hundred thousand (Tshs. 14,500,000/=) which by then exceeded the threshold prescribed as the Primary Court's pecuniary jurisdiction in matters related to civil debts.

Furthering his argument Mr. Mwang'anyi elaborated the fact that prior to amendment of the law vide **The Written Laws Miscellaneous Amendment Act (No. 3) Act No. 13 of 2016** which amended the provisions of Section 18 (1) (a) of the Magistrates Courts Act Cap 11, Primary Courts had no pecuniary jurisdiction to entertain matters for recovery of civil debts whose value exceeded three million shillings (Tshs.3,000,000/=). Thus it was Mr Mwang'anyi's view that, this was sufficient cause for the District Court of Moshi to grant extension of time.

The learned counsel relied on the judgment of **Principal Secretary Ministry of Defence and National Service V Dharim Valambia 1992 TLR** at page 185 where the court observed;



"when the point at issue is one alleging the illegality of the decision being challenged the court has a duty even if it means extending the time for the purpose of ascertaining the point of illegality and if the alleged illegality being established, to take appropriate measures to put the matter and record right"

Mr. Mwanganyi contended further that, the District Court erred in holding that the appellant failed to show reasonable cause and that the delay was inordinate without taking into consideration the fact that the decision of the trial court was tainted with illegalities hence, the District Court ought to have extended the time regardless the delay was inordinate. He referred the decision in the case of **China Friendship Textile Ltd V Our Lady of Usambara Sisters** TLR 2006 at page 70 where the court held that:-

"Since the trial Court had no jurisdiction all the pleadings and decision were null and void"

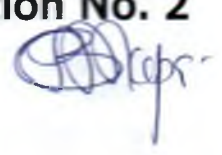
The learned counsel finally prayed for the Court to allow the appeal with costs, quash the decision and decree of the District Court and allow the appeal against the trial court's decision.



From the appellant's brief submission the question that arises is whether the appellant has demonstrated sufficient cause for the court to exercise its discretion in granting extension of time.

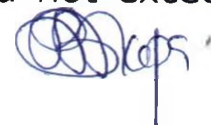
It is well settled that application for extension of time is entirely in the discretion of the court to grant or refuse depending on the circumstances of each case as there are no hard and fast rules on what amounts to sufficient cause. However, from numerous court decisions a number of factors have to be taken into consideration including whether or not the application has been brought promptly, length of the delay, degree of prejudice to the respondent and the legality of the decision intended to be challenged.

In the instant appeal the appellant challenged the district court's decision on the fact that illegality of the impugned decision could have made the court consider the application in a different light. It is worthy to note that, illegality besides being of sufficient importance it must as well be apparent on the face of record to necessitate interference by the higher court. This has been summed up in **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**, when the Court held;



*“Since every party intending to appeal seeks to challenge a decision either on point 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 demonstrate 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 be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process.**”* [Emphasis Mine]

Taking note of the above authority and appreciating the submission advanced by the counsel for the appellant, I find it necessary on the outset to reiterate the legal position related to Primary Court’s pecuniary jurisdiction on the recovery of any civil debt arising out of a contract. That, prior to the amendment of the Magistrate’s Court Act Cap 11 vide the Misc. Amendment Act (No. 3) Act No. 13 of 2016, the amount did not exceed three million shillings (Tshs. 3,000,000/=).



It is sufficiently established in the instant appeal the fact that, in **Civil Case No. 7 of 2010** the suit amounted to shillings fourteen million five hundred thousand (Tshs. 14,500,000/=) and the same was filed in 2010 prior to the said amendment. Thus, it is crystal clear that the trial court had no jurisdiction in entertaining the same.

In the light of the above, I hold that the appellant has demonstrated sufficient reason to be granted extension of time by the District Court. Accordingly, the appeal is allowed. Consequently, the District Court's decision is hereby quashed and set aside. The appellant is allowed to file his appeal in the District Court within 30 days from today. Since the omission was occasioned by the District Court, each party to bear own costs.

It is so ordered

Dated and delivered at Moshi this 28th day of May, 2021.




S. B. MKAPA
JUDGE
28/05/2021