

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISCELLANEOUS CIVIL APPLICATION NO. 05 OF 2021

(Arising from the Civil Appeal No. 20/2020 of the District Court of Sengerema at Sengerema).

**TCG C/O MELKIAD TIBEZUKA.....1ST APPLICANT
SAMWEL ALFRED.....2ND APPLICANT**

VERSUS

**DENIS MGETA.....1ST RESPONDENT
WEO NYEHUNGE.....2ND RESPONDENT**

RULING

Date of last Order: 28/07/2021

Date of Ruling: 26/08/2021

F. K. MANYANDA, J.

This ruling is in respect of an application for extension of time within which to file an appeal to this Court from a Civil Case originating in a primary Court.

The application is made by way of a chamber summons supported with an affidavit sworn by James Ezekiel, which together with the counter affidavit and other record, give the background of this matter, as follows:-

That Denis Mgeta, the 1st Respondent instituted a civil case which was registered as Civil Case No. 38 of 2020 at the Nyeuhunge Primary Court suing the Second Respondent, WEO for Nyeuhunge Ward. He sued him for wrongful, sale of his house in an auction intending the same to be nullified. The trial court decided in favour of the WEO Nyeuhunge on grounds that the issue of sale of the house of the 1st Respondent could not be revised due to long elapse of time after the sale.

The 1st Respondent been aggrieved, appealed to the District Court of Sengerema in Civil Appeal No. 20 of 2020. In that appeal there were joined as respondents together with the WEO of Nyeuhunge, both of the Applicants in this application namely, TCG c/o Melkiad Tibeziuka and Samwel Alfred who were the purchasers. The said Applicants were not parties in the original Civil Case No. 38 of 2020. The District Court quashed the decision of the Primary Court of Nyeuhunge on ground that the attachment and sell of the 1st Respondent house was wrongly processed. The decision of the District Court aggrieved the Applicants who seeks to challenge it before this Court but they are out of time.

Hearing of this application with leave of this Court was argued by way of written submissions. The submissions for the Applicant were drawn and filled by Mr. Akram Adam, learned Advocate, and those of the Respondents were drawn and filed by Ms. Flora Enos, learned Advocate.

Mr. Acram argued in support of the Application by adopting the chamber summons and the affidavit and added that after delivery of the decision, the applicant applied for copies of judgment which was availed to him on 20/11/2020. Being a lay person, the Applicants started seeking for legal services which he got from Delict Attorneys, subsequently made the instant application.

As to the grounds Mr. Acram submitted that there is a serious illegality on points of law on the face of the records that the Applicants have never been party to the Civil Case No. 38 of 2020 in the trial Primary Court that gave rise to Civil Appeal in the Appellate District Court. The Applicants were not informed about the proceeding in the trial Primary Court. The Counsel also argued that in the trial Court, the case was an application to set aside an attachment and sale in execution of a decree, but the Applicants were

not made parties, hence were condemned unheard. Lastly the learned Counsel argued that it was wrong for WEO of Nyehunge Ward to be sued without joining the Sengerema District Council Executive Director.

Relying in the authority in the case of **Principal Secretary, Ministry of Defence and National Service vs Devram Valambia**, [1992] TLR 185, submitted that illegality on point of law on the face of the record constitutes good cause for the Court exercise its discretion to extended the time within which to appeal in order for the Court to avail time for it to rectify the illegality. Mr Acram prayed the application to be allowed.

On the otherside Ms. Flora Enos submitted by adopting the counter affidavit and submitted resisting the application that under Rule 3 of the Civil Procedure (Appeals Originating in Primary Courts) Rules, 1963 GN No, 312 of 1964, the Applicant is required to show among other things reasons why the petition of appeal was not or cannot be filed within thirty (30) days after the decision. She relied in the case of **Registered Trustees of the Chama cha Mapinduzi and 3 others vs Mehbooh Ibrahim Alibhai (as Legal Representative of Late Gulam Hussein Alibhai)** Civil Application No. 355/17 of 2018 (CAT) unreported where it insisted that the applicant must

not only give reasons for delay but must do so without delay for extension of time to be granted. She analysed the reasons for delay as being waiting for copies of decision and looking for legal advice.

It was her submissions that copies of the judgment is not among the requirement for appeals from Primary Court as per Rule 4(1) of GN No. 312 of 1964. She referred to the case of **Gregory Raphael vs Pastory Rwehabura** [2005] TLR 99 where it was held among others that the appeal from primary Court matter is instituted upon filing of the petition of appeal and payment of requisite fees. Other cases on point she cited are **Swabaha Mohamed Shoshi vs Saburia Mohamed Shosi**, Misc. Probate Application No. 67 of 2016 (unreported) and **Sophia Mdee vs Andrew Mdee and 3 others** Civil Appeal No. 05 of 2015.

As regard the second reason of seeking legal advice, the Counsel submitted that the impugned decision was delivered on 22/09/2020 and the time to appeal against it elapsed on 23/10/2020. The applicant started to seek advice on 20/11/2020 already out of time. It was her view that time started to run after delivery of the judgment not after supply of copies of judgment. The Applicants, according to Ms. Flora Enos, were at liberty to

seek for legal advice immediately after delivery of the judgment. Therefore, a delay of 116 days is unwarranted to.

Those were the submissions by the learned Counsel for both sides. I have dispassionately considered both and gone through the record. Basically it is not in controversy that the Applicants were not parties in the proceedings before the trial primary Court. Both Applicants were added as parties as Respondents on appeal before the District Court. Equally it is trite law that for this Court to exercise its discretion to extend the time within which to appeal out of time, the applicant must show good caused by giving reasons for the delay and reasons for extending the time.

The applicants in this matter as explained by the Counsel for the Respondents in their affidavit they deponed they delayed to appeal because they were waiting for copy of the judgment and even after obtaining the said copy. They had to seek for legal advice. This is not good caused according to the Counsel for the Respondents.

I agree with her. It is trite law that copy of a judgment is not a requirement for an appeal to be instituted in Court in respect of appeals from

Primary Courts. This is in accordance with provisions of Rule 4 (1) of the Civil Procedure (Appeals Originating in Primary Courts) Rules, 1963, G. N. No. 312 of 1964 which reads as follows: -

*"4 (1) Every petition of appeal to a district Court from the decision or order of a Primary Court and **every petition of appeal to the High Court** from a decision or order of a District Court in the exercise of its appellate or revisional jurisdiction **shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against** and shall be signed by the appellant or his agent."* [Emphasis added]

From the provisions of Rule 4(1) of GN. No. 312 of 1964 it is obvious that only a petition of appeal can institute an appeal. This was the holding of this Court (Hon. Luanda, J as he then was) case of **Gregory Raphael vs Pastory Rwehabula** [2005] TLR 99 that: -

"Attachment of copies of decree and judgments is a condition precedent in instituting appeals originating from District Courts and Courts the Resident Magistrate but not appeals in matters originating from Primary Courts, there is no such requirement

and the filing process is complete when the petition of appeal is filed upon payment of the requisite Court fees.”

Having found that the copy of the judgment and decree was not a requirement for the Applicants to attach to their petition of appeal to this Court, means that they could appeal by filing the petition of appeal only. Their reason for the delay is not meritorious.

Their argument that they also delayed due to hunt of legal advice is also unacceptable.

In this application, the Counsel for the Applicant however added another reason for extending the time. He contended that there is a serious illegality on the face of the record of both trial Primary Court and the appellate District Court. He explained that the Applicants were not made parties in the objection proceedings before the trial Primary Court, but came to be made parties in the appellate District Court. However, the said District Court did not hear them instead, it dealt with proceedings of the trial Primary Court and nullified the sale, hence prejudiced them in that they were condemned unheard leading to unfair hearing.

It is trite law that illegality on the face of the record, if pleaded and proved, is a good cause for extension of time. This is the holding in the case of **Principal Secretary, Ministry of Defence and National Service vs Devram Valambia** [1992] TLR 185. The Court of Appeal of Tanzania stated as follows:-

"Where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute "sufficient reason" within the meaning of rule 8 of the Rules for extending time".

The Court added also that:-

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

In the matter at hand the Applicants, being purchasers of the subject matter, were not made parties in the objection proceedings at the trial Primary Court, the appellate District Court ought to had have remitted back the matter to the trial Primary Court to have the Applicants given opportunity

to be heard. Therefore, it is the finding of this Court that the illegality in the decision of the appellate District Court is established.


In the result, since illegality on the decision constitutes sufficient reason for extending the time, I do hereby find that the Applicant have established good cause for extension time.

Consequently I do hereby make the following orders:-

- (a) Time within which for the Applicants to file an appeal in this Court is hereby extended.
- (b) The Applicants to lodge their appeal within thirty (30) days from the date of this order.
- (c) Costs to be borne by the Respondents.

Order according.




F. K. MANYANDA
JUDGE
26 /08/2021