

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**PC CIVIL APPEAL NO. 18 OF 2021**

(Arising from Misc. Civil Application No. 5/2021 at Kigoma District Court before K. V. Mwakitalu, RM and originating from Civil case No.168 /2020 of Ujiji Primary Court before M. J. Luchunga RM).

**YAHAYA RASHIDI..... 1<sup>ST</sup> APPELLANT**

**HAMIS MUSA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**KASSIM MASUDI AND 11 OTHERS.....RESPONDENTS**

**J U D G M E N T**

15<sup>th</sup> & 15<sup>th</sup> September, 2021

**A. MATUMA, J**

The Appellants herein Yahaya Rashid and Hamisi Musa were sued by the Respondents herein in the primary court of Ujiji in Civil Case No. 168/2020 for a claim of Tshs. 7,200,000/= . The claim originated from Criminal case no. 168 of 2018 whereas the appellants were prosecuted and convicted for obtaining money by false pretenses. They were alleged to have defrauded the Respondents by selling to them pieces of land which later was discovered that they were not belonging to them (Appellants). After such criminal conviction, the respondents instituted the Civil suit in the

Primary Court to recover their defrauded amount of money and consequential costs thereof.

The Primary court having heard the suit adjudged for the Respondents, ordered and decreed that the appellants were liable to pay the respondents Tshs 4,080,000/= . That was on 29/12/2020.

The appellants became aggrieved by that decision but could not appeal in time. They thus made an application for extension of time in the District Court of Kigoma on 15<sup>th</sup>/03/2021. The appellants' application was dismissed for lack of sufficient cause for the delay.

Dissatisfied with the said decision denying them extension of time to appeal, the appellants are now before me appealing against that ruling and order of the District Court with four grounds of appeal namely;

- 1. That the trial District Court of Kigoma grossly erred in law and fact which it ignored the Appellants' extension of time while the same had a sufficient ground for extension of time.*
- 2. That, the trial District Court of Kigoma grossly erred in law and fact when it ignored the illegality the trial primary court had entertained the matter which is a land matter whites the same had no jurisdictions.*

*3. That, the trial District Court of Kigoma grossly erred in law and fact when it believed that Criminal Case that was instituted against the appellants was the prima facie evidence that the same had changed the land matter to civil matter after the appellants being convicted while the alleged owner of the suit shamba was not called to testify in the court. Hence the ownership of suit land has never determined by a competent court.*

*4. That, in those circumstances, the findings of the trial District Court rejected its extension of time is legally ungrounded and is nullity.*

When this appeal came for hearing, the appellants were present in person and represented by Mr. Silvester Damas Sogomba learned Advocate while the respondents except Edisa Shabani (6<sup>th</sup>), Leonia Mugunya (11<sup>th</sup>) and Revania Khalfani (12<sup>th</sup>) were present and all unrepresented.


Mr. Sogomba learned Advocate for the Appellants submitted the four grounds into two major complaints; **one;** that his clients had sufficient cause for the delay and thus were wrongly denied extension of time to appeal against the judgment of the Primary Court, and **two;** that the Judgment of the Primary court is tainted with illegality as it was erroneously reached for the court had no jurisdiction over the matter which was a land dispute.

The learned advocate submitted that having been aggrieved by the impugned judgment, the appellants on the 30<sup>th</sup> December, 2020 just the next day after the delivery of the judgment wrote to the trial Court to be supplied with the copy of such judgment but could not get it until on the 3<sup>rd</sup> February, 2021 when the time for appeal had elapsed.

The learned advocate just like what he did in the District Court argued that without having such impugned Judgment the Appellants could not prepare sound grounds of appeal. He thus blamed the District court to have denied them extension while such ground alone could suffice.

On the illegality, the learned advocate submitted that it has been the law that when there is illegality on the impugned judgment, that is as well a ground for extension of time. He submitted that the Appellants sold to the Respondents their lawful land and that there is no any finding to the contrary has been reached by the Competent Court. As the matter originates from such sale and purchase of the land, the Primary court was not vested with jurisdiction to entertain the suit.

He thus called this court to allow the Appeal and extend the Appellants time within which they should appeal to the District Court.



The respondents on the other hand, joint replied that the Appellants had no sufficient cause for the delay as the impugned Judgment was delivered and issued to the parties on the same very day 29<sup>th</sup> December, 2020.

After hearing of both parties, I am of a firm stand that this appeal should fail. This is because it is a settled law that a party seeking to be granted extension of time should adduce sufficient ground or grounds for the delay to have appealed within the statutory period of time.

In the instant case, the advanced grounds are; that, the appellants were supplied with a copy of judgment when the time for appeal had elapsed despite the fact that they requested it earlier. In rejecting this ground, Hon. K.V. Mwakitalu (RM) ruled out that there was no proof that the trial court delayed to supply them with the impugned judgment because the same was certified on the same day of the delivery. Thus, it was ready for collection since then. The learned magistrate was of the further argument that the Appellants' averments that they were given the impugned judgment on 03/02/2021 were mere words without any proof. I agree with the reasoning of the honorable Resident Magistrate. The impugned Judgment is indeed certified to have been ready for collection on the 29/12/2020. It was there for collection by either party as from such date. The appellants ought to have obtained it that day or soon thereafter.

If at all the appellants did not get the copy of such judgment in time it is because they did not make any follow up. Otherwise, an affidavit of the Court Officer to the effect that they were really supplied the impugned judgment on 3/2/2021 was necessary. That affidavit would give us highlight as to why such a delay to have supplied the appellants with that judgment if truly there was any delay on the part of the court.

In absence of such affidavit, it is difficult to determine that the appellants did not get the impugned judgment early before the alleged 03/02/2021.

I make this finding in line with the decision in the case of ***John Chuwa Vs. Antony Ciza [1992] TLR 233*** which held that ***an affidavit of a person so material has to be filed***. See also; ***Kighoma Ali Malima vs Abas Yusufu Mwingamno, Civil application No. 5 of 1987*** (unreported).

In fact, that is where we get the requirements of Certificate of Delay on appeals to the Court of Appeal. Just to authenticate that the delay was caused by the Court itself. Mere words cannot stand. In lieu of such certificate the appellants should have proved in evidence as to when exactly they were supplied with the impugned judgment. Be it a dispatch or the relevant page of the register of the Court or the affidavit of the relevant Court Officer.

On the necessity of having the impugned judgment for preparation of sound grounds of appeal, I agree with Mr. Sogomba learned advocate that although it is not a legal requirement that the impugned judgment of the primary court must be attached to the Appeal, the same is important document from which the sound grounds of appeal can be drawn. The issue in the instant case is however that there was no sufficient proof that the appellants were lately supplied the said judgment which show that it was ready for collection on the same day of its delivery.

But again, even if there would have been proof that the trial Court delayed them as herein above stated, the appellants did not bother to explain the delay as from the 3<sup>rd</sup> day of February, 2021 when they allege to have been supplied the impugned judgment to 15<sup>th</sup> February, 2021 when they ultimately filed their application in the District Court. The law is settled that even a single day of the delay must be accounted for. There is no whatsoever explanation for the delay at that time when they were in possession of such judgment. In that respect, the appellants did not adduce sufficient grounds for their delay and the honourable Resident Magistrate rightly dismissed this ground.

Coming to the issue of illegality, the District court properly in my view ruled that the dispute at the trial Court was not over the land ownership



rather a civil suit for recovery of money which was fraudulently obtained by the Appellants from the Respondents.

Once there is a criminal judgment in which the Appellants were convicted for obtaining money by false pretenses, the issue was not relating to land ownership or land dispute in whatever manner. It was purely a Civil suit for recovery of money and not purely a land matter.

In fact, in the Criminal case as reflected in the judgment the appellants admitted to have been wronged in selling those plots and undertook to refund the Respondents their purchase prices. See page two of that judgment (Criminal case no.168/2018) where the trial court observed;

*"The accused persons (now the appellants) did not contravene the evidence adduced instead were politely admitting to have received the money and are liable for what happened, both accused persons were responding that are ready to refund their money and that all witnesses were innocent purchasers"*

In the circumstances, as between the appellants and the Respondents there is no land conflict but a claim back of the money fraudulently obtained by the appellants. The allegations that the primary court entertained a land matter which is beyond its jurisdiction is therefore





unfounded and cannot form the basis of extension of time. The District Court thus rightly rejected the ground of illegality.

Before I put my pen down let me say something on the ground of illegality as sufficient ground for extension of time. It has been a tendency of advocates and their clients in each application for extension of time to plead illegality against the judgment upon which extension of time is sought to be challenged. It has turned to be a fishing ground in every application of such nature and any appeal therefrom. I have in a number of cases questioned; Since the role of an applicant in an application for extension of time is to account for each day of the delay, how do illegality can be used to account for such delay. Is the ground of illegality there as a safeguard to those who have no any sufficient cause for the delay?

Thus, for instance in the case of ***Gombe High School (Mkurugenzi wa Shule ya Sekondari Gombe School-Yared Fubusa-PHD) Versus Ruhwanya Kilangi (PC) Civil Appeal No. 08/of 2020*** at page 7 I held that;

*"For irregularity to be a ground for extension of time, the same should be apparent on the face of the trial court's records and should not be traced after a long-drawn argument of the parties. The rationale behind is very clear, allowing the parties to extensively argue the alleged*

*irregularities in an application for extension of time would mean allowing arguments on appeal itself in disguised manner. If that is done then the intended appeal would be pre-empted as the ground thereof would have been determined conclusively by the higher court in which the intended appeal is to be filed."*

When I read the decision in the case of ***Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Womens Christian Association of Tanzania***, Civil Application No. 2 of 2010 which had set the guidelines for the factors to be considered by the Court in the exercise of its discretion to extend time or not, I find that the ground of illegality is there for the Superior court itself having observed it from the records of the lower court. It is not for the applicant to take it as his supporting weapon. His role is to account for all period of the delay. The Court of Appeal in Lyamuya Construction's case supra among other factors to be considered stated;

*"If the court feels there are sufficient reasons, such as the existence of a point of Law of sufficient importance such as the illegality of the decision sought to be challenged".*

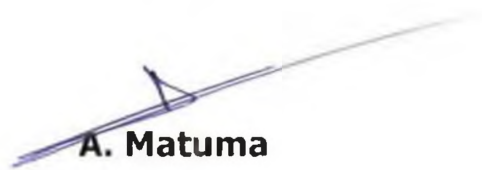
One should not therefore relax without appealing in time merely because he shall at any time raise up with the ground of illegality to frustrate the findings of the lower court which other parties would have reasonable

ground to believe that it has conclusively ended for no further action has been taken of within the prescribed time limit.

With the herein observations, the District Court rightly dismissed the application and this appeal has been brought without any sufficient cause.

It is hereby dismissed in its entirety with costs. Right of appeal explained.



  
**A. Matuma**

**Judge**

**15/09/2021**

**Court:** Judgment delivered on this 15<sup>th</sup> day September, 2021 in the presence of the appellants' in person and the respondents except three of them were absent.

**Sgd: A. Matuma**

**Judge**

**15/09/2021**