

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 323 OF 2021**

(Arising from the Ruling of the District Court of Kinondoni at Kinondoni in Misc. Civil Application No. 103 of 2019 before Hon. Mwakalinga, **SRM** dated 14/05/2020)

**ST. JOSEPH UNIVERSITY IN TANZANIA .....APPLICANT**

**VERSUS**

**SAFARI INDOOR DIGITAL.....RESPONDENT**

**RULING**

*26<sup>th</sup> Oct, 2021 & 19<sup>th</sup> Nov, 2021.*

**E. E. KAKOLAKI J**

Before this court is the applicant who is seeking for an extension of time within which to file an Appeal to this court against the Ruling of District Court of Kinondoni at Kinondoni in Misc. Civil Application No. 103 of 2019, handed down on 14/05/2020, dismissing her application for extension of time to file an appeal to the said District Court against the decision of the Primary Court of Sinza in Civil Case No. 229 of 2018. The same is preferred under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] herein after referred to as LLA, supported by the affidavit of Erasmus Denis Buberwa, advocate

for the applicant. In his affidavit the applicant has raised two grounds constituting good cause to move this court exercise its discretion and grant her extension of time. The first ground is that the decision sought to be impugned was delivered in their absence and without being notified by notice and the second ground is based on illegality of the decision sought to be challenged. When the chambers summons was served to the respondent the application was vehemently resisted as the respondent filed the counter affidavit to that effect. Hearing of the matter proceeded under written submission with leave of the court and both parties were represented, Mr. Erasmus Buberwa being for the applicant and Mr. Kenedy Lyimo for the respondent respectively.

Section 14(1) of LLA employed by the applicant to move this court to grant her the relief sought empowers this court to exercise its discretion to so grant extension of time upon good cause shown by the applicant. As what amounts to good cause there is no fast and hard rule as that depends on the circumstances of each case and the materials placed before the court by the applicant for consideration by court explaining the reasons that delayed him from acting timely be it in filing the appeal or application. See the case of **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil

Application No. 13 of 2010, (CAT-unreported) and **Jumanne Hassan Bilingi Vs. Republic**, Criminal Application No. 23 of 2013 (CAT-unreported). It is also the law in demonstrating the grounds for delay the applicant must account for each and every day delayed, though the ground of illegality of the decision if sufficiently pleaded and established is a sufficient ground for extension of time even when the delayed days have not been accounted for so that the court can take appropriate measures to put the matter and record straight. See the cases of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Yong Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (CAT-unreported), **Bushiri Hassan Vs. Latifa Lukio, Mashayo**, Civil Application No. 3 of 2007 (CAT), **Julius Francis Kessy and 2 Others Vs. Tanzania Commissioner for Science and Technology**, Civil Application No. 59/17 of 2018 (CAT-unreported), **The Principal Secretary, Ministry of Defence and National Service Vs. Dervan P. Valambhia** (1992) TLR 387 (CAT) and **TANESCO Vs. Mfungo Leonard Majura and 15 Others**, Civil Application No. 94 of 2016, (CAT) to mention few. In the case of **Julius Francis Kessy and 2 Others** (supra) the Court of Appeal gave a number of factors to be considered by the court when entertain an application for

extension of time one being to account for the delayed days. In so doing the court said the factors include:

- 1) *The length of delay,*
- 2) *The reason for delay,*
- 3) *The applicant must account for the delay of each day;***
- 4) *Degree of prejudice that the respondent may suffer if the application is granted.*
- 5) *The delay is not inordinate.*
- 6) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. (Emphasis supplied)*
- 7) *If the Court feels that there are other 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.*

Similarly in consideration of the ground of illegality in situation where the delayed days have not been accounted for the Court of Appeal in the case of **TANESCO** (supra) had the following observations:

*“Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, **there is a complaint of illegality in the decision intended to be impugned... suffices to move the Court to grant extension of times so***

***that, the alleged illegality can be addressed by the Court.” (Emphasis supplied)***

Having exhaustively visited the position of the law and the duty of the applicant in establishing good cause and that of this court when considering whether to grant the application for extension of time or not, let me now move on the determination of the only issue before the court whether the applicant has shown good cause to warrant this court grant her extension of time as sought in the chamber summons. Submitting on the first ground which facts are deposed in paragraphs 4 and 5 of the applicant’s affidavit Mr. Buberwa for the applicant informed the court that the ruling of the District Court sought to be impugned was delivered during the COVID 19 pandemic period on 14/05/2020 in the absence of the applicant and without notice. That the applicant upon making a follow up discovered that fact and were availed with the copy of ruling on 24/06/2020 before she immediately took action of filing this application after noting that she was out of time within which to appeal against the said decision being the aggrieved party. In opposition relying on the case of **Bushiri Hassan** (supra) on the need to account for each and every day delayed and **Lyamuya Construction** (supra) and **Finca (T) Limited and Kipondoro Auction Mart Vs.**

**Boniface Mwalukasa**, Civil Application No. 589/12 of 2012 (CAT) on the application of the ground of illegality in extension of time, Mr. Lyimo for the respondent lamented the applicant the grounds relied upon by the applicant are not meritorious as she has concentrated on the establishing illegality on point of law forgetting to account for the delayed days in filing the appeal as well as this application as averred in her affidavit in support of the chamber summons. He thus implored this court to dismiss the application with costs for want of merit. Having examined the proceedings of the trial court (District Court) as to the date of delivery of the impugned ruling it is true no notice was ever issued to the applicant before delivery of the said ruling. However, the learned advocate for the applicant has not cited any law which enjoins the court to issue a notice of ruling nor did he cite to the court any authority to support his contention that the court contravened the law for pronouncing the ruling in the applicant's absence. It is the law under section 110 and 111 of Evidence Act, [Cap. 6 R.E 2019] that he who alleges or claims right basing on certain facts and wishes the court to pronounce judgment on his favour basing on the said facts must prove to the court that the same exists. In this case since the applicant is claiming the ruling ought to have been delivered upon notice being issued to her ought to have so proved before this court,

the duty which she has failed to discharge. That aside my examination of the record has it that, the applicant was on court lastly on 01/04/2020 when the matter was scheduled for mention on 16/04/2020 the date which both parties did not appear as a result the court decided to fix the matter for ruling on 13/05/2020 having satisfied itself that submissions by the parties were complete. On the 13/05/2020 when the court was set to deliver the ruling both parties did not appear in court once again the fact which moved the court to adjourn it to 14/05/2020 when the same was delivered in presence of respondent. Despite of pleading existence of COVID 19 pandemic the applicant was not prevented from visiting the court to establish the date of ruling or any other orders after losing track of the case for non-appearance on 16/04/2020, the date which was lastly scheduled in her presence on 01/04/2020, as the court was open and session were on. The applicant's act of not attending court session for necessary orders and sitting at her back awaiting the court to inform her that submissions were complete and the matter was thus fixed for ruling in my opinion does not bail her out as that amount to lack of diligence, sloppiness and apathy in prosecuting her matter. All said I find this ground lacking in merit and therefore does not

constitute good cause for this court to exercise its discretion to grant her extension of time as prayed.

Next for determination is the ground of illegality where the applicant through paragraphs 6 and 7 deposed and raised the point of law or rather illegality of the decision of the Primary Court on the competency of the applicant to sue or be sued as a legal entity which ground the trial court did not consider and decide on when dismissing her application. Mr. Lyimo for the respondent did not say anything on this ground apart from citing the cases of **Lyamuya Construction** (supra) and **Finca (T) Limited and Kipondoro Auction Mart** (supra) on the point of illegality without more and press this court to dismiss the application with costs. I have internalised the applicant's submission as well as revisiting the impugned ruling to ascertain the said illegality. Indeed it is apparent error on face of record that the District court apart from narrating the appellant's submission on the raised point of illegality of the decision of the Primary Court of Sinza for proceeding to determine the matter of the party whose legal status was uncertain before the court did not determine it before dismissing the said application. I say the error is apparent as the court is enjoined to address the issues raised by the parties and adjudicate on before pronouncing its verdict. Whether the



verdict of the District Court is justifiable or not it is the point to be determined by this court during the appeal if this application is granted. Where the point of illegality is established, the court has a duty of extending time so as to allow the appellate court to make it good and put the record clear. This was the position of the Court of Appeal in the case of **Dervan P. Valambhia** (supra) where it observed that:

*"In our view, 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 record straight."*

In this matter since the point of illegality of the decision of the District Court has been successfully pleaded and ascertained by this court, I hold the applicant has sufficiently established good cause for this court to grant the extension of time as prayed.

In the circumstances and for the foregoing reasons and law, I would conclude that the applicant has demonstrated good cause to move this court grant her the prayers sought. The application is therefore granted. Time is extended for fourteen (14) days from the date of this ruling for the applicant

to file an appeal against the decision of the District Court of Kinondoni in Misc. Civil Application No. 103 of 2019, dated 14/05/2020.

I order each party to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 19<sup>th</sup> day of November, 2021.



E.E. KAKOLAKI

**JUDGE**

19/11/2021

Delivered at Dar es Salaam in chambers this 19<sup>th</sup> day of November, 2021 in the presence of the Mr. Erasmus Buberwa, advocate for appellant, Mr. Judith Mkwizu, advocate for the respondent and Ms. Asha Livanga, court clerk.

Right of appeal explained.



E.E. KAKOLAKI

**JUDGE**

19/11/2021

