

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

MISC. CIVIL APPLICATION NO. 175 OF 2021
(Arising from Civil Appeal No. 2 of 2020)

MIZUKA CREWAPPLICANT

VERSUS

HOTTER BARBARA.....RESPONDENT

RULING

Last order: 26th November, 2021

Ruling: 26th November, 2021

MASABO, J.:

The applicant intends to appeal to this court against the judgment of the district court of Bagamoyo in Civil Appeal No. 3 of 2020. By a chamber summons filed in court on 15th April 2021, she prays for a leave for extension of time within which to appeal out of time. Supporting the application is an affidavit deposed by one Steven Mhando who is identified as the applicant's counsel.

The facts of the application as averred in the affidavit are that, the applicant was the defendant in Civil Case No. 64 of 2019 before Bagamoyo primary court. Both parties were unhappy with the decision. They cross appealed to

the District Court of Bagamoyo in Civil Appeal No. 2 and No. 3 which were later consolidated and determined on 17th August 2020. Aggrieved further, the applicant appealed to this court in PC Civil Appeal No. 186 of 2020. The appeal was filed in court on 16th September 2020 but it was struck out at the infancy stage for incompetence on 18th March 2021. Hence, this application as the time within which to appeal has lapsed.

At the viva voce hearing, both parties were represented. Mr. Steven Mhando, learned counsel was for the Applicant and Mr. Kiondo Mtumwa for the Respondent.

A person aggrieved by a decision or order delivered by a district court in the exercise of its appellate or revisional jurisdiction is required by law to file his appeal within 30 days after the date of the impugned decision or order as per section 25(1)(b) of the Magistrate Court's Act, Cap 11 RE 2019. This court may however enlarge the time to allow the party to file his appeal out of time. It is trite that much as such powers are discretionary, they must be exercised judiciously upon the applicant demonstrating a good cause for delay. Articulating this principle in **Ngao Godwin Losero v. Julius**

Mwarabu, Civil Application No. 10 of 2015, CAT at Arusha (unreported),
the Court of Appeal of Tanzania stated thus:

"To begin with I feel it is instructive to reiterate, as a matter of general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice.

As to how to arrive at the rules of reason and justice, the Court of Appeal stated further that, in exercising the discretion, the court must consider several issues, including, the duration of delay-whether the delay is not inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged.

Now, considering that the impugned judgment was delivered on 17th August 2020 the total duration of delay is approximately 7 months reckoned from 29th September 2020 when the duration of 30days within which to file the appeal lapsed and 15th April 2021 when this application was filed. From these

fasts it shows that the delay is inordinate thus it must be fully accounted for. Looking at the dispositions in the affidavit, I am convinced that the applicant has ably accounted for the duration from 29th September 2021 to 18th March 2021. It is deponed under paragraph 8 and 9 of the affidavit that during this period, the applicant was dutifully pursuing an appeal, PC Civil Appeal No. 186 of 2020 which he filed in this court on 19th September 2020 but was struck out for incompetence on 18th March 2021. As this part of the disposition was uncontroverted, I find this duration excusable.

As for the subsequent period of approximately one month between 18th March 2021 and 15th April 2021, the applicant has miserably failed to account for it. The averment made under paragraph 11 of the affidavit is baseless and beyond comprehension as it appears to suggest that the rules of Mizuka Crew are superior to section 25(1)(b) of the Magistrate Court's Act, Cap 11 RE 2019 which sets the timetable for appealing against judgments and orders made by the district court exercising its appellate or revisionary powers. This is serious misdirection and devoid of any consideration.

Much as the failure to account for the duration of delay is a sufficient cause for dismissal of the application, the applicant herein has advanced a point of illegality which if established, constitutes a good cause for extension of time. It is now a trite law in our country that when the point at issue is one alleging illegality of the decision being challenged, the court has a duty to grant the prayers for extension of time for purposes of ascertaining the alleged illegality and taking the appropriate measures to correct it (see **Principal Secretary, Ministry of Defence Vs Deveram Valambhia** [1992] TLR 182). It is similarly trite that, for the applicant to benefit from this rule, he must demonstrate to the satisfaction of the court that the illegality constitutes a point of law of sufficient importance and is apparent on the face of the record. The principle was articulated in **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT) (unreported) where it was stated as follows:

“Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that section 25(1)(b) of the Magistrate Court's Act, Cap 11 RE 2019 in Valambhia's case, the court meant to draw

a general rule that every applicant who demonstrates 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 also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process".

In the present case, assertions as to illegality are deponed under paragraph 14 of the affidavit under which it is lamented that, contrary to the law applicable in civil appeals, the court granted stay of status quo; the judgment of the court is not explicit on which basis was the appeal partly allowed and partially dismissed; and lastly, the judgment was based on extraneous matters as opposed to evidence tendered in court.

Without dwelling on the merit of the intended appeal, having scrutinised the materials rendered to me by the applicant, I am of the considered view that the application passes the two tests above and for that reason, I proceed to

allow the application. The applicant is to file his appeal within 14 days. The costs shall be shared by each party covering its respective costs.

DATED at DAR ES SALAAM this 26th day of November 2021

X 

Signed by: J.L.MASABO

J.L. MASABO
JUDGE

