

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

MISC. CIVIL APPLICATION No. 03 OF 2022

(Arising from the Misc. application No. 19 of 2019 of the District Court of Nyamagana, Original PC Civil Case No. 179 of 2018 of the primary court of Mkuyuni)

AMANI MAFURU----- APPLICANT

VERSUS

SHIBIDE LUGOBA-----RESPONDENT

RULING

Last Order date: 28.06.2022

Ruling Date: 30.06.2022

M. MNYUKWA, J.

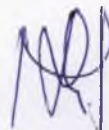
By the way of chamber summons, the applicant Amani Mafuru applied to this court for an order to extend time to file an appeal to this court out of time against the ruling of the District Court of Nyamagana in Misc. Civil Application No. 19 of 2019 dated 30.09.2019. The application is preferred to this court under section 25(1)(b) of the Magistrate Courts Act, Cap 11 [Re: 2019] supported by the affidavit sworn by Amani Mafuru, the applicant.

The matter is briefly that, the application emanates from the decision of Nyamagana District court in Misc. Civil Application No. 19 of

2019 which was an application for extension of time to appeal against the decision of Civil Appeal No. 179 of 2018 before Mkuyuni Primary Court which was decided against the applicant. The Application No. 19 of 2019 before Nyamagana District court was dismissed on 30.09.2019 as it reads on the copy of the Ruling. Dissatisfied by the decision, the Applicant appealed to this court in Pc. Civil Appeal No. 05 of 2021 which on 23.06.2021, it was struck out for being pre-maturely filed for the pleadings reads that the appeal was filed on 25.09.2019 against the Ruling of the district court which was delivered in 30.09.2019. Following the decision of this court in PC Civil Appeal No 05 of 2021, the applicant found time bared to re-approach this court and therefore filed this application for an extension of time.

At the hearing, parties prayed before this court to argue the application by way of written submissions the prayer which was granted by this court on 30.05.2022 and the parties complied.

On the written submissions by the applicant drawn and filed by Musa KD Mhingo advocate, submitted that, after the decision of Civil Case No. 179 of 2018 before Mkuyuni Primary Court he was not given a copy of the judgment on time and decided to file an application for extension of time which was dismissed by the district court. He went further that, he



approached this Court and filed PC Civil Appeal No. 05 of 2021 which was struck out on 23.06.2021, for it was found to be filed prematurely. He went on that from 25.09.2019 when the Ruling of the District Court was delivered, the applicant was within the corridors of the court to pursue his rights and the delay was not caused by the negligence of the applicant. He avers that the delay was not actual but rather a technical delay referring to the case of **Fortunatus Masha vs William Shija and Another** (1997) TLR 154.

He further submitted that the decision of Mkuyuni Primary Court which the appeal is sought constitutes illegalities for the reasons that the respondent in this application had no locus standi to institute the case against the appellant at the trial court for lack of proof that she was the applicant's employer and taking into consideration that the project was led by a women group, the respondent did not exhibit whether she was authorized to initiate the proceedings on their behalf.

Referring to the case of **Paul James vs Diesel & Auto-electric Services Ltd and Two Others**, Civil application No. 54 of 2007 CAT, he insisted that illegality is a sufficient reason for the extension of time. In that regard he prays for this application to be allowed.



Responding to the applicant's submissions with written submissions drawn and filed by Fidelis Cassian Mtevele advocate, the respondent submitted by acknowledging that this court has discretionary power to grant an extension of time upon sufficient reasons be fronted which are to be assessed by this court based on circumstances underpinned each particular case. Citing the case of **Bakari Abdallah Masoud vs Republic**, Criminal appeal No. 123/07 of 2018 1994 EA, he insisted that the court in deciding whether there is a just cause, criteria such as the reasons for the delay, account for each day of delay, an explanation on the delay that was not due to lack of diligence or a result of negligence or the existence of illegality apparent of the face of the decision must be considered.

Reverting to the applicant's submissions, he avers that the applicant reveals the reason for the delay as the confusion of the date by the District Court but he claims that though the applicant claims that the decision was delivered on 25.09.2019 and not on 30.09.2019 as it appears in the Ruling and that the petition of appeal attached on the PC Civil Appeal No. 05 of 2021 was dated and signed by his counsel on 23.09.2019 before the decision of the district court.



He further state that, the applicant did not exhibit the reason for delay from the date the decision by this court was struck out on 23.06.2021 to the date he filed this application on 05.08.2021 which makes a total of 42 days. Insisting, he cited the case of **Lusagila Machia vs R**, Criminal Application No. 26/11 of 2016 CAT and the case of **Daresalaam City Council vs S. Group Security Co. Ltd**, Civil Application No. 234 that even a delay of a single day must be accounted for.

He went on that, on the issue of illegality contended by the applicant against the decision of Mkuyuni Primary court, he claims that the same is misconceived and misplaced for the reasons that, First, the reason was to be stated on the affidavit faulting the decision of the district court for failure to consider illegality and not the decision of the Primary Court. Citing the case of **Sabena Technics Dar Limited vs Michael J. Luwanzu**, Civil Application No. 40 of 2021 CAT referring to the case of **Iron and Steel Limited vs Martin Kumaliya and 117 Others**, Civil Application No. 292/18 of 2020, he insisted that illegality can not be granted in all applications but only in a situation where if extension sought is granted that illegality will be addressed. He insisted that since the intended appeal is not against the decision of the primary court the issue



of illegality is misplaced. He went on that the illegality contended by the applicant is based on evidence and proof and not apparent on the face of the records. He insisted that the same is against the principle stated in the case of **Lyamuya construction Company limited vs Board of Registered Trustee of Young women's Christian Association Of Tanzania**, Civil Application No. 02 of 2010 CAT that illegality has to be apparent on the face of the records. He retires and prays this application to be dismissed for want of merit with costs.

Rejoining, the applicant mainly reiterated his submissions in chief prays this court to allow the application insisting on the point of illegality that existed in the trial court.

Having gone through the arguments for the application herein advanced by the applicant and the respondent learned counsel for both sides, the central issue for consideration and determination is whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant.

As submitted by both parties and as it is the settled position of the law that when it comes to granting an order for an extension of time to appeal, the court has discretion to grant based on the circumstance of each case when it is established that the delay was with a sufficient cause

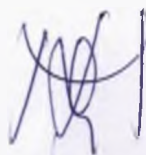


or else there was a point of illegality that impedes justice. With the cited cases by learned counsel and as it was stated in the case of **Benedict Mumelo vs. Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

In the application at hand the applicant fronted reasons for his delay and on the other hand, raised the issue of illegality on the decision of the trial court which was the subject of the appeal before the district court which was dismissed and now the subject to this application. As illegality is based on the point of law, and as the applicant has raised it in his submissions, I will first determine the point of illegality.

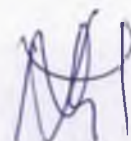
The law is settled that where illegality is raised as a ground for seeking an extension of time, such ground amounts to sufficient cause. The Court of Appeal in **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015 quoted with approval the case of **Principal Secretary Ministry of Defence and National Service vs Devram**



Valambia [1991] T.L.R. 387 observed as follows when the issue of illegality was raised:-

"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 the record straight"

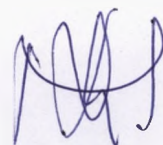
I agree with the parties' submissions and in view with the respondent cited cases of **Sabena Technics Dar Limited (supra)** that referred the case of **Iron and Steel Limited (supra)** that illegality cannot be granted in all applications but only in a situation where if extension sought is granted that illegality will be addressed. Going to the circumstances in this application, the applicant is applying for extension of time to appeal against the decision of the Nyamagana District Court in Misc. Civil Application No.19 of 2019, which was an application for extension of time to appeal against the decision of Civil Case No. 179 of 2018 before Mkuyuni Primary Court. The applicant in his submissions, claims that there existed illegality in the decision of the primary court to include the plaintiff locus standi which will be addressed had the leave sought granted.



The contention by the applicant that there is a point of illegality, suffice to stand as a good reason for the extension of time for the reason that, this is an application for extension of time and when the leave sought will be granted, the anomalies at the trial court will be addressed as the subject of the appeal. this position was further reaffirmed in the case of **VIP Engineering and Marketing Limited and Three Others vs Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CAT, wherein it was clearly stated;

"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay"

Having in mind that, before me is an application for extension of time to appeal against the decision of the district court where the first bite of the application for extension of time was dismissed, for the applicant to appeal out of time against the decision of the primary court which he claims that there was illegality, I am not placed to determine the extent of illegality which will be addressed at the appeal stage. But without prejudice, I went through the court records and specifically on the trial court judgment which connotes what is stated as illegality for the second



paragraph exhibit that the plaintiff operated the fish ponds with other women as a group. In that regard, the issue of locus stand will be addressed as a subject of the appeal.

To that end, and as it is settled that illegality alone is ground sufficient to extend time, and taking into consideration an appeal is a constitutional right and granting this application I will, in no way prejudice the respondent, I proceed to allow the application by granting the applicant 14 days from today to present his appeal before this court. I make no orders as to costs.

Order accordingly.




M.MNYUKWA
JUDGE
30/06/2022

Court: Judgement delivered in the presence of the parties.


M.MNYUKWA
JUDGE
30/06/2022