

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA
MISC. CRIMINAL APPLICATION NO. 56 OF 2021**

(Arising from Resident Magistrate's Court of Bukoba at Bukoba in Criminal Case No. 222 of 2019)

SEVELIAN WILBARD..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Date of Ruling: 29/07/2022

A.Y. Mwenda, J.

In this Application, the applicant is seeking extension of time within which to lodge a notice and a memorandum of appeal out of time. It is brought under Section 392A (1)(2) and 361 (2) of the Criminal Procedure Act. [Cap 20 R.E 2019]. It is also supported by an affidavit sworn by the applicant. Contesting the present Application, the respondent filed a counter affidavit which was sworn by Mr. Juma Mahona Ngassa, learned State Attorney.

At the hearing of this application, the applicant was represented by Mr. Pereus Mutasingwa, learned counsel and the respondent republic was represented by Mr. Emmanuel Kahigi, learned State Attorney.

Invited to submit in support of the application, Mr. Pereus Mutasingwa submitted that a ground for which the applicant is seeking extension of time to file notice of

appeal and a memorandum of appeal out of time is the illegality of the proceedings before the Resident Magistrate's Court. He said the trial court dealt with a civil case which was contractual in nature as a criminal case.

He said that the whole proceedings and the judgment shows the applicant and the victim entered into a contract for collecting and selling fish. The Applicant's failure to pay the proceeds of fish selling to the victim pushed the victim to complain before the police. He added that before the victim could complain before the police, the applicant and the victim signed an agreement where the applicant promised to repay the said proceeds and the said agreement was received as exhibit D2 during trial hearing before the lower Court. In support to his argument, the learned Counsel for the applicant cited the case of SAVERINA D/O EXAVERY VS. THE REPUBLIC, CRIMINAL APPEAL NO. 9 OF 2019 (unreported), at page 15 paragraph 3.

The learned counsel submitted that in the records there is another illegality with regard to jurisdiction of the court in convicting and issue of order for compensation. He said the compensation of TZS 25,700,000/= was wrongly issued by the trial court contrary to Section 170 (2) (c) of Criminal Procedure Act [Cap 20 RE 2019]. He said since the said compensation exceeded TZS. 6,000/=, the same ought to have been confirmed by the judge of the High Court. With the stated illegalities, the learned Counsel for the Applicant prayed this Court to grant extension of time so as to put the records right.

Responding to the submissions by the learned Counsel for the applicant, Mr. Emmanuel Kahigi, learned State Attorney informed the Court that the republic opposes this application. He submitted that it is true that there is illegality and the same is a ground for extension of time but the same does not come automatically. He said Under Section 361(1) and (b) of Criminal Procedure Act, guidelines on time limitation for an aggrieved party to file notice and petition of appeal are prescribed. The learned State Attorney was of the view that even if there was any illegality still the applicant was required to do so within timeline set by the law and for that matter accounting for each and every day of delay was crucial which the applicant failed to do. He concluded his submissions by stating that the applicant's delay was due to his negligence and sloppiness and for that matter this application is unmerited. He then prayed this application to be dismissed.

In a short rejoinder, the learned Counsel for the applicant submitted that he is pleased that the learned State Attorney acknowledges that there is existence of illegality and for that matter this court cannot turn a blind eye on them. He added in that the issue of accounting for each and every day of delay would surface if there was no illegality on the trial Court's records. He concluded his rejoinder by submitting that illegalities are sufficient cause for extension of time. He then prayed the present application to be granted.

Having summarized the adversary submission from both sides, it is my turn to adjudge the present application. To do so I have framed an issue for determination

which is whether the applicant advanced sufficient reasons for extension of tension.

It was the learned counsel for the applicant's submission that the records of the resident magistrate of Bukoba at Bukoba are tainted with illegality. He said the first illegality is the way the applicant was charged in a criminal case while the grievances between the complainant and the applicant was over the contract for supply and sale of fish whereupon the applicant failed to pay the proceeds of the sale of fish. Secondly the learned counsel for the applicant submitted that it was illegal for the Hon Trial Magistrate to order compensation of TZS 25,700,000/= without the said compensation being confirmed by the Judge of the High Court. On the other hand, the learned State Attorney contended that although there are illegalities on the record, the same should not be of assistance to the applicant as he failed to account for each and every day of delay.

From the submissions by both counsels by the parties, it is evident that there are allegation of existence of illegalities in the trial court's records. The record shows there was an arrangement of supply and sell of fish with a view of paying back the proceeds to the victim. The records are also clear that before the incident was reported before the police, the applicant and the complainant entered into an agreement for refund of the proceeds of sale of fish to the victim. On the face of it one may note that applicant believes that the grievances between him and the

victim centers on the contract and for that matter, this point is fit to be tabled before the High Court for scrutiny.

It is trite practice that a claim for illegality is the sufficient reason for extension of time. In the case of ALLY CHAMANI V. DIONIZI KARWAN & TWO OTHERS, LAND APPLICATION NO. 67 OF 2020, this court while citing the case of AG. V. TANZANIA PORTS AUTHORITY & ANAOTHER, CIVIL APPLICATION NO. 87 OF 2016, CA (Unreported) held, that;

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

The learned state Attorney was of the view that although the trial Court's records are tainted with illegality, still the applicant was required to account for each and every day of delay. With due respect to the submission by the learned state attorney, under the circumstances of this matter, that position is inapplicable. As was correctly stated by Mr. Pereus Mutasingwa, the learned counsel for the applicant, that position would apply if there were no illegalities on the records.


In the case of VIP ENGINEERING AND MARKETING LTD AND TWO OTHERS V. TRI-TELECOMMUNICATION (T) LTD, CONSOLIDATED CIVIL REFERENCES NO. 6, 7 AMD 8 OF 2006, CAT (Unreported) it was held that;

"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."

From the foregoing, since the applicant claim illegality in the trial court's records, the allegation which the respondent republic agrees that it exist, that alone constitute sufficient reason for extension of time and this application is hereby allowed. The applicant is thus ordered to file his notice of intension to appeal before the trial court and an appeal before this court within fourteen (14) days from the date of this ruling.

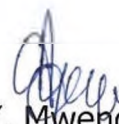
It is so ordered.




A.Y. Mwenda
Judge
29.07.2022

Ruling delivered in chamber under the seal of this court in the presence of Mr. Pereus Mutasingwa learned counsel for the Applicant and in the absence of the Respondent.




A.Y. Mwenda
Judge
29.07.2022