

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB - REGISTRY OF MWANZA  
AT MWANZA**

**MISC. CIVIL APPLICATION NO. 53 OF 2022**

*(Arising from Civil Case No. 02/2020 in Nyamagana District Court)*

**PAMBANO MALEKANA PAMBE.....APPLICANT**

**VERSUS**

**BENARD MAKALA @ SEBASTIAN .....1<sup>st</sup> RESPONDENT**

**THE NATIONAL INSURANCE CORPORATION LTD..2<sup>nd</sup> RESPONDENT**

**RULING**

*11<sup>th</sup> & 12 August, 2022*

***Kahyoza, J.:***

This ruling is in respect of **Pambano Malekana Pambe's** application for extension of time to appeal against the decision of the Nyamagana district court. **Pambano Malekana Pambe's** (Pambano) ground for seeking extension of time is that he was sick and that he was applying for extension on account of illegality.

**National Insurance Corporation Ltd**, the second respondent (NIC) resisted the application by filing counter affidavit, contending that the applicant had no good cause for delay and he negligently delayed to appeal.

There is only one issue that is whether the applicant adduced sufficient reason for delay.

Brief background is that; **Pambano** sued **Benard Makala @ Sebastian** and NIC before Nyamagana District Court for damages. He lost. Aggrieved, appealed to this Court vide Civil Appeal No. 77 of 2020,

which was struck out with cost on 25<sup>th</sup> February, 2021. He did not re-institute the appeal timely. He instituted the current application seeking for extension of time to re-institute the appeal.

The appeal was heard orally. Mr. Machele P. Mukaruka, advocate represented the applicant and Mr. Paul Said, state Attorney appeared for NIC. I now consider the only issue, whether the appellant has adduced sufficient reason for delay.

**Has Pambano adduced sufficient reason for delay?**

It is a settled principle of law that courts have discretion to extend time but that discretion must be judiciously exercised. Thus, it may be granted where the applicant adduces sufficient cause for the delay and not out of sympathy. See *Mumello vs Bank of Tanzania [2006]* E.A 227.

The applicant seeks for extension of time on two grounds; **one**, that he was sick, hence, unable to re-institute the appeal on time; and **two**, that the decision of the district court of Nyamagana Civil Case No. 02 of 2020 is tainted with illegal.

**Was the applicant's sickness prevent from re-instituting an appeal on time?**

One of the reasons advanced by the applicant is that he was seriously sick to the extent that he could not file his appeal on time as stated under paragraph 5 of the applicant's affidavit. The applicant attached a letter (Kiambatisho 'B') from Bugando Medical Centre showing that the applicant is suffering from right ankle deformity and pus discharge for four years and that he has been on wound dressing, he could walk with difficult. In support of the contention that sickness is a ground for extending time, the applicant's advocate cited the case of

**Masunga Mbegeta vs. The Honourable Attorney General & Another Civil Application No.173/01 of 2019.** In that case, the High Court Judge stated that;

*"I would agree with the applicants and their counsel that, mere discharge from hospital is not an indication of full recovery from sickness."*

NIC's State Attorney deposed and submitted that **Pambano** was not sick since he was declared by Bugando Medical Centre that he had recovered. He attached a letter issued by Bugando Medical Centre issued on 04<sup>th</sup> November, 2019. He added that **Pambano** did not state what was he suffering from. he submitted that the applicant was required to stated how sickness delayed him for such a long period of time. He cited **Shofire Vs. Omary Ally [1992] TLR 245**, where the Court of Appeal upheld the decision of the High Court that,

*"Ill health without elaboration cannot be good ground for extension of time after delay of five months"*

NIC's State Attorney, Mr. Paul Said further argued that applicant delay for more than a year thus it cannot be a good ground that he delayed to institute an appeal because he was sick.

I am of the firm view that once a person proves that ill health prevented him to take legal action, that amounts to a good cause for delay. See **Emanuel R. Maira vs The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported), where it was held that:

*"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike"*

Nevertheless, to prove that one was sick is not enough in the absence of a medical chit showing that a person was excused from duty because of sickness. This stance was taken in **Varerian Fiita v. Issa Said Qanaay**, Misc. Land Appeal No. 15/2020 HC at Arusha (Unreported) where the Court referred to the decision of the Court of Appeal in **K.V Construction LTD v. Mwananchi Engineering Ltd & Constructions, Civil Application No. 50 of 2004** The Court of held in **K.V Construction LTD's** case that-

*"In the absence of medical chits showing that the advocate was excused from duty because of illness then no sufficient reasons had been shown."*

In the instant case, Pambano did not tender a medical chit to prove that he was sick. I do not share the applicant's advocate's view that an applicant would prove that he was sick by tendering an administrative letter. I associate myself with the decision of the Court of Appeal in **K.V Construction LTD's** case that-

*"In the absence of medical chits showing that the advocate was excused from duty because of illness then no sufficient reasons had been shown"*

In addition, it is on record that Pambano had already instituted an appeal which this Court baptized as Civil Appeal No. 77/2020. The Court struck out the appeal. If Pambano was able to institute Civil Appeal No. 77/2020, which was struck out, what prevented him from re-instituting appeal. Pambano had a duty to indicate how he managed to institute Civil Appeal No. 77/2020 while he was still sick and failed to re-institute

another appeal due to same sickness. Not only that but also, despite being sick Pambano instituted a suit in the district court.

### **Is the impugned decision is tainted with illegality?**

It is established that illegality of the impugned decision is ground for extension of time to enable the superior court to deal with the illegality.

Pambano's advocate submitted that the decision of the district court was illegal. He contended that the district court held illegally that it had no jurisdiction to here and determine tortious liability case. He argued that district courts have jurisdiction to try common torts, hence, it is illegal to hold that it had no jurisdiction. To support is position that illegality is a ground for extending time, the applicant's advocate cited **Eqbal Ebrahim Vs. Alexander K. Wahyungi**, Civil Application No. 235/17 OF 2020, where the Court of Appeal of Tanzania held that;

*"I subscribe to the concurrent submission of the learned counsel that; this is a fit case for a grant an extension of time on sole ground of illegality"*

NIC's advocate argued that the applicant did not adduced sufficient reason for delay. He contended that the applicant was required to prove factors stated in **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No. 2/2010**, where the Court of Appeal provided the guidelines for one to succeed on application for extension of time.

He argued further stated that, the applicant did not substantiate what was the basis of arguing that the decision of the district court was

illegal in his affidavit. The applicant's advocate simply explained the illegality while submitting. He contended that advocate's submission from the bar is not evidence.

It is settled that for illegality to amount to a good ground to support an application for extension of time, it should emanate from the proceedings or judgment sought to be challenged. The Court of Appeal took that stance in **the Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185 and many others, where it held that-

*"Where the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute sufficient reason"*

The Court of Appeal added that the alleged point of illegality must be of sufficient importance and **must 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. The Court of Appeal pronounced itself in **Ngolo Godwin Losero v Julius Mwarabu** Civil Application No. 10/2015 CAT at Arusha (unreported), where the Court of Appeal reiterated its decision in **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application 2/2010 that-

*"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 in Valambhia's case, the court meant to draw a general principle 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 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. The Court in the case Certainly, it will take a long-drawn process to decipher from the impugned decision the alleged misdirection or non-directions on the points of law."*

In the instant the case, the district court of Nyamagana held that;

*"In the case at hands, the plaintiff's plaint shows that, this is a normal civil suit, and the specific damages which determines the jurisdiction of the court was 3,418,800/=*"

The applicant's advocate submitted that time be extended on account of illegality is bound to fail on the following reasons; **one**, the applicant did not clearly point out the alleged illegality in his affidavit. The illegality came out through the applicant's advocate's submission. NIC's state attorney submitted that submission of the advocate from the bar is not evidence. I am in total agreement with NIC's state attorney. It is settled that grounds for delay must be indicated in the affidavit. Submission from the bar is not evidence. See the decision of the Court of Appeal in **Registered Trustees of the Arch Dioceses of Dsm vs. The Chairman Bunju Government and Others**, Civil Case No. 147 of 2006, where the Court held that-

*"Reasons for delay must be reflected in the affidavit. Submissions are not evidence but explanations on the evidence already tendered."*

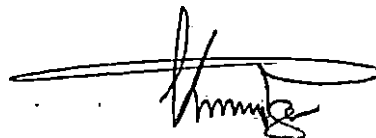
**Two**, the alleged illegality is not be apparent on the face of the record of the impugned decision. It is the position of the law that the illegality must be apparent on the face of record to support an application for extension of time and not the one which discerned after long arguments. The applicant's advocate had to make arguments in order to establish that the trial court illegally decided that it has no jurisdiction.

I find no illegality to warrant this Court to extend time as the alleged illegality is not apparent on the face of the impugned decision of the trial court. Consequently, I find the second ground, the applicant advanced to support an application for extension, without merit.

In the upshot, I find that the applicant had not adduced sufficient reason(s) for extension of time. Consequently, I dismissed the application for want of merit. Given the nature of this application, I make no order as to costs.

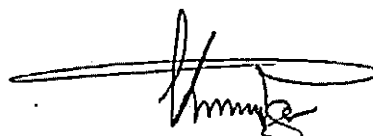
I order accordingly.

**DATED at Mwanza** this 12<sup>th</sup> day of August, 2022.



**J. R. Kahyoza**  
**JUDGE**

**Court:** Ruling delivered in the presence of the applicant's advocate and in the absence of the respondents. B/C Jackline (RMA) present.



**J.R. Kahyoza**  
**Judge**