

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC CIVIL APPLICATION No. 40 of 2022**

*(Originating from Juvenile Court of Hanang District at Kateshi in Application No. 08 of 2020)*

**MARTIN GIDAHABU GISAMO.....APPLICANT**

**VERSUS**

**MARIA MICHAEL PAULO..... RESPONDENT**


**RULING**

10<sup>th</sup> August & 09<sup>th</sup> September 2022

**TIGANGA J**

The applicant herein applied before this Court for extension of time to file his appeal against the decision of the Juvenile Court of Hanang at Kateshi in Juvenile Civil Application No. 08 of 2020 which was delivered on the 08<sup>th</sup> December 2021. Other prayers are costs for the application and any other reliefs this honourable Court deem fit to grant. The applicant moved this Court under section 14(1) of the Law of Limitation Act, cap 89 R: E 2019.

The respondent did not appear and defend the application, therefore the application was heard and determined exparte. In proof of the application, the applicant asked the court to adopt and rely on the chamber

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summons and its supporting affidavit as part of his submission. He literally added nothing, but prayed for a date of the ruling.

In the affidavit filed in support of the application, he stated at paragraph 3 and 4 that, he requested for the copies of proceedings and the ruling of the trial Juvenile Court but he failed to obtain them as he was told that the Typist was on leave. It is his further submissions that, the ruling before the trial Court was delivered on the 08<sup>th</sup> December 2021, he stated that, he collected the said copies on the 24<sup>th</sup> February 2022. At paragraph 6 and 7 of his affidavits he further stated that, as soon as he obtained the copies, he faced critical family problems making him unfit to appeal on time and as he visited the lawyers for legal assistance, he was told that he was out of time to appeal.

Following that information, he was advised to file this application. The applicant also raised an illegality as one of his grounds for extension of time to appeal, that the trial court decided the matter under uncertainties, that the proceedings of the trial court were tainted with procedural encumbrances and the trial court decided the matter out of its scope.

Now from what he deposed in the affidavit, the issue for determination raised by this court is whether this application is meritorious? **In deciding the application,** I find it prudent to ascertain an applicant's reasons for his delay, at para 4 of the applicant's affidavit the applicant complains that when he went to the trial court for collection of the said copies of judgment and proceedings, he was told that the Typist was on leave, but he obtained the said copies on the 24<sup>th</sup> February 2022. The matter intended to be appealed against was decided on the 08<sup>th</sup> of December 2021, the applicant requested the documents on 20<sup>th</sup> December 2021. He did so by letter dated on 20<sup>th</sup> December 2021, but he was told that the Typist was on leave, even if this court assumes that the Typist vacation commenced on the 20<sup>th</sup> December 2021, such leave legally could not end in dates after the 20<sup>th</sup> of January 2022 as it is well known that under the **Government Standing Order 2009** as amended, at section H, item H.1 (2) an annual leave for public servants is 28 days. The Applicant submits that he collected the said copies on the 24<sup>th</sup> February 2022, give him the benefit because although he wrote a letter requesting the said copies the tribunal never replied back to him informing him of the readiness of the said copy for collection an omission which entitles him

the benefit of doubt. It is my considered view that, the applicant has managed to justify the technical delay of up to 24<sup>th</sup> February 2022.

Under paragraph 6 of the affidavit, the applicant deposed the fact which indeed I find to be illogical, that he faced critical family problem which he did not disclose to this court. In my view telling this court that, he had critical family problems without specifying them, it becomes difficult for this court to ascertain the said problems and scrutinize them in terms of their seriousness, in such a way that, they delayed the applicant to file his appeal. This fails to stand as a good cause for an extension of time in accounting the days delayed from 24<sup>th</sup> February 2022.

The applicant further raised the ground of illegality, and his points of illegalities are, **firstly**, trial court decided the matter under uncertainties, **secondly**, the trial court proceedings were tainted with procedural encumbrances, **thirdly**, the trial court decided the matter out of its scope. It is the law that, once illegality has been raised as the ground for extension of time, then the court once satisfied of the said illegality then, the said ground becomes good cause for extension of time. Looking at the nature of the points raised as illegality though it is not glaringly clear on record, but since the applicant is unrepresented lay person, then, he is entitled to be the

benefit so that he can file an appeal to tell the court the complained of illegality for the appellate court to consider and decide. That said, I find the application to be meritorious, although the applicant has failed to account the days from 24<sup>th</sup> February 2022 when he collected the copy up to when he filed this application, yet the application is allowable under the ground of illegality. On that base therefore, the applicant is hereby given 21 days within which to file an appeal. As the application stands uncontested, and the delay has never been contributed by the respondent, no order as to cost is made.

Order accordingly.

**DATED** at **ARUSHA** on the 09<sup>th</sup> September 2022.



  
**J.C. TIGANGA**

**JUDGE.**