

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

**MISC. CIVIL APPLICATION No. 37 OF 2022**  
*(Arising from the Ruling of the Resident Magistrate Court of Mwanza at  
Mwanza in Misc. Application Cause No. 26 of 2009)*

**NKWABI SHING'OMA LUME.....APPLICANT**

**VERSUS**

**SECRETARY-GENERAL  
CHAMA CHA MAPINDUZI..... RESPONDENTS**

**RULING**

*Last Order date: 14.09.2022  
Ruling Date: 29.09.2022*

**M. MNYUKWA, J.**

By way of chamber summons, the applicant Nkwabi Shing'oma Lume, applied to this court seeking for an order to extend time to appeal to this court out of time, from the decision of the Resident Magistrate Court of Mwanza at Mwanza in Misc. Application Cause No. 26 of 2009 dated on 12/11/2021.



The present application is preferred to this court under section 14(1) of the Law of Limitation Act Cap. 89 [Re: 2019] supported by the affidavit sworn by Nkwabi Shing'oma Lume the applicant.

The applicant is now before this court applying for extension of time to appeal out of time. When the matter was called for necessary orders on 30.05.2022, the applicant appeared in person and the respondent afforded the service of Nasra Sharji and Rhoda Maruma learned counsels. This court gave orders that the counter affidavit to be filed on 11.08.2022 and the appellant's reply if any to be filed on or before 26.08.2022 and the hearing to be on 14.09.2022. The respondent did not file a counter affidavit or enter an appearance on the date scheduled for hearing. The applicant prayed this court to proceed ex-parte, the prayer which was granted and the matter proceeded ex-parte against the respondent.

At the hearing, the applicant appeared in person unrepresented. In his brief submissions, he prayed this court to adopt his affidavit to form part of his submissions. He prayed this court to extend time so as to enable him to appeal before this court. He retires insisting that, on paragraph 26 of his affidavit he stated reasons for his delay and prays this application to be granted.



It is an established principle that, decision to grant or not grant an order of extension of time is within court discretion and that discretion should be exercised judiciously and supported by logical, valid, authentic and sound reasoning as it all depends upon a party seeking an order to adduce sufficient reason(s) that prevented him from doing what he was supposed to do within time or the existence of illegality apparent on the face of records of the impugned decision which cannot be left un-interfered. This is reflected in the case of **Benedict Mumelo vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 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 affidavit gave reasons for his delay which can be traced from para 21 to 26 as I extract hereunder:-

*21. That in response to my foregoing letter to the Resident Magistrate in-charge of the RMs Court (Hon. Ndyekobora), certified the required proceedings on 09.03.2022. On the*



*same date, I was issued with the said proceedings. A copy of those proceedings is attached bellow as annexure "N12".*

- 22. That, on 15/03/2022, I wrote a letter to the Resident Magistrate in charge of the RM's Court requesting for stay or adjournment of the matter sine die until when the Appellate process against the complained Ruling and Order of the RM's Court dated 25/02/2021 is over. That letter was also copied and served to the Respondent. A copy of the said letter is attached below as Annexure "N13". Consequently, my request was granted by the RM's Court on 17/03/2022.*
- 23. That, on 19/03/2022, my health condition became very poor due to Hypertension. I was very sick to the extent that I could hardly walk or talk. Consequently, I was taken to Mwanza Dispensary for proper medical management. On that occasion, I was admitted on the same day of 19/03/2022, and I was discharged on 15/04/2022. A copy of the Discharge Form from the said Dispensary is attached below as Annexure "Na 14".*
- 24. That, from 18/04/2022 up to 20/04/2022, I daily attended at Mwanza Dispensary as an out-patient. On 20/04/2022, my health condition showed a lot of improvement.*
- 25. That, on 21/04/2022, I consulted my advocate and engaged him to prepare this application for me. The said preparation was completed on 27/04/2022.*
- 26. That, the complained Rulings and Orders are tainted with serious illegalities, irregularities and improprieties apparent on*



*the face of the record as per the following 4 grounds of the intended appeal:*

- (a) The RM's Court erred in law and in fact when it omitted to specify the amount of payment of wages as decided in the original case.*
- (b) The RM's Court erred in law and in fact when it omitted to consider and effectively deal with or determine the claim of general damages.*
- (c) The RM's Court erred in law and in fact when it gave a Ruling which is contradictory to the Extracted Order.*
- (d) The RM's Court erred in law and in fact on 12/11/2021 when it disowned its previous Ruling dated 25/02/2021.*

From the long story of the applicant, as shown on his affidavit from paragraph 1 to 26, he narrated how the event took place while in the corridors of the court until the last court's decision, which is the ruling of the Resident Magistrate Court of Mwanza at Mwanza dated 12.11.2021. Given the date the impugned Ruling was delivered, the appellant was required to file his appeal in 90 days' time in terms of part two item 1 of the Law of Limitation Act Cap. 89 RE: 2019 on or before 12.02.2022. It is obviously as shown on the records that, this application was filed on 12.05.2022 and the applicant delayed for 40 days. Assessing the reasons for delay, it is on the applicant affidavit on paragraph 21 that, he was



waiting for copies of the Ruling which he applied on 04.03.2022 vide a letter (annexure "N11") which were certified and handled to him on 09.03.2022. Going to the applicant's affidavit details, on paragraph 23 to 25, he gave reasons that, he felt sick.

I am mindful that sickness is a reason for extension of time. See **Nyanza Road Works Limited vs Giovanni Guidon**, Civil Appeal No. 75 Of 2020. The applicant in proving his point, he attached annexure "N14" a medical discharge form showing that, he was admitted from 19.03.2022 and discharged on 15.04.2022. Again, after he recovered from sickness, he went on giving reasons that, he applied for legal services and he was afforded vide his letter TLS/MC/DC/DLHT/HC/CA/04/2022 dated 11.05.2022.

In fact, countless authorities of the Court of Appeal emphasized on the applicant to account for each day of delay even if the delay is of a single day. In the case of **Dar es Salaam City Council v Group Security Co. Ltd**, Civil Application No. 234 of 2015 CAT at Dar es Salaam where it was stated that:-

*"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for each day of delay."*



Also, in the case of **Bushiri Hasani vs. Latifa Lukiko Mashayo**, Civil Application No. 03 of 2007 CAT it was held that: -

*"...Delay of even a single day, must be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

For the foregoing and taking into consideration the circumstances pertaining in the current application, it is my finding that the applicant has given good causes and accounted for his delay to warrant the extension of time sought.

Again, on para 26, the applicant claimed that there is illegality which needs to be rectified. 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, 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"*



The Court has further reaffirmed the stated stance in **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported), 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"*

Guided by the above principles, I perused the court records and go through paragraph 26 of the applicant's affidavit and annexures, the impugned Ruling of the resident Magistrate Court of Mwanza, and for what I have also endeavoured above, the claim of illegality will be addressed when he will lodge the appeal.

In the final result, this application is merited and I proceed to grant the extension of time as applied. The applicant has to file his appeal within 30 days from today. No orders as to costs.

It is so ordered.



  
**M. MNYUKWA**  
**JUDGE**  
**29/09/2022**



**Court:** Ruling delivered on 29/09/2022 in the presence of the applicant and in absence of the respondent.

A handwritten signature in blue ink, appearing to be 'M. Mnyukwa', is written over the printed name.

**M. MNYUKWA**  
**JUDGE**  
**29/09/2022**