

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. CRIMINAL APPLICATION NO. 12 OF 2021

MWALIMU SONGO.....APPLICANT

VERSUS

MATAJI LESSI MUHANGARA.....RESPONDENT

(Arising from the judgment of District Court of Kondoa -M.Mvungi, RM)

Dated 29th of November, 2020

In

Criminal Appeal No. 21 of 2020

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RULING

1st August & 30th September, 2022

MDEMU, J.:

This is an application for extension of time filed by the Applicant on 01st March, 2021. It is under provisions of section 24(1)(b) of the Magistrates' Courts Act, Cap. 11. The Applicant prays for the following orders, that: -

1. *That, this Honourable Court be pleased to allow extension of time to the Applicant within which to lodge his appeal to this Honourable Court out of time against the decision of the District Court of Kondoa, in Criminal Appeal No. 21 of 2020.*

2. Any other relief this Honourable Court deems fit and just to grant.

The application is supported by an affidavit sworn on 24th February, 2021 by one Marcelly Costantine Kanoni, the Applicant. When the matter came for hearing on 01st of August, 2022, the Applicant was represented by Mr. Nchimbi, learned Advocate, whereas the Respondent appeared in person.

In support of the application, Mr. Nchimbi after adopting the affidavit of the Applicant to form part of his submission submitted that, the Applicant was heard in the appeal at Kondoa District Court. He came to learn hearing of the appeal when summoned to hand over the herds of cattle. He argued that, this is illegality which this Court and Court of Appeal over times insisted to be a ground for extending time to file appeal or an application out of time. He cited the case of **FINCA TZ Ltd and Another vs. Boniphace Mwalukisa, Civil Application No. 589/12 of 2018** (unreported) to bolster his position. He thus prayed this Court to consider this ground and allow the application on extension of time.

In reply, the Respondent adopted his counter affidavit and submitted that, the Applicant was served twice at Gonga Village where he

said to reside. But he is rather residing at Sanzawa Village. He said therefore the Court decided to proceed in his absence.

In rejoinder, Mr. Nchimbi reiterated his submission in chief and added that, the Respondent has conceded that the Applicant was not served since the service was done at Gonga while the Applicant resides at Sanzawa.

Having carefully gone through submissions of both parties, affidavit and counter affidavit, the issue to be determined here is whether the Applicant has shown good and sufficient cause for this court to extend time to appeal.

It is a settled principle of the law that, Courts have discretion to extend time but that discretion must be judiciously exercised. Thus, leave to appeal out of time may be granted where the Applicant adduces sufficient cause for the delay. See the case of **Mumello vs. Bank of Tanzania [2006] E.A 227**. Reasons advanced by the Applicant to extend time to appeal is illegality, that is, he was not heard at the District Court in a criminal appeal subject to this application.

It is settled law 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. In the case of the

Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia [1992] T.L.R. 185, the Court 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 constitutes sufficient reason"

The Court added that, the alleged illegality must be of sufficient importance and must be apparent on the face of the record. See also the cases of **Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015** (unreported); **Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported). Furthermore, in the case of **VIP Engineering and Marketing Engineering Limited and Three Others vs. Citibank Tz Ltd Consolidated Civil Reference No. 6,7 and 8 of 2006** (unreported), It was held that: -

"We have already accepted it as established law in this country that where the point of law at issue is illegality or otherwise of the decision being

challenged, that itself constitutes sufficient reasons."

In view of the fact that there is an alleged illegality on proper service of summons to the Applicant which led him not to be heard in such appeal, I find it appropriate to allow the application on the basis of this point so that the Applicant be given the right to be heard and be accordingly heard.

For the forgoing reasons, the application is granted. The Applicant is to file an appeal within a period of thirty (30) days from the date of delivery of this ruling.

It is so ordered.



Gerson J. Mdemu

JUDGE

30/09/2022

DATED at DODOMA this 30th day of September, 2022



Gerson J. Mdemu

JUDGE

30/09/2022