

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

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 77 OF 2022**

(Originating from the Decision of the District Court of Kinondoni in Civil Case No. 100 of 2019)

**THE TPB PLC..... APPLICANT**

**Versus**

**UMOJA WA MADEREVA WA MABASI TANZANIA.....RESPONDENT**

Last date:23/05/2022

Ruling date:10/08/2022

**R U L I N G**

**MANGO, J**

By a chamber summons made under section 14(1) of The Law of Limitation Act [Cap 89 R. E. 2019], the Applicant, TPB, has moved this Court to grant extension of time to appeal against whole judgment and decree in Civil Case No.100 of 2019 at Kinondoni District Court. The application is supported by an affidavit sworn by the Applicant's advocate. The Applicant prayed for the following orders: -

1. That leave be granted for the Application to file out of time an Appeal against the whole judgment and decree in civil case No. 100/2019, District Court of Kinondoni, December, 2020
2. Costs of the application be in the event and,
3. Other reliefs as this Court may deem fit to grant

The Respondent did not file a counter affidavit despite being dully served with Court summons and the application. He also did not enter appearance on 23<sup>rd</sup> May 2022 when the matter was called for hearing, thus the Court ordered the application to be heard *ex parte* against the Respondent.

In his submission in support of the application, Epaphro Mwego, learned advocate for the Applicant adopted the contents of the affidavit filed in support of the application to form part of his submission. According to the affidavit, the reason that contributed to the Applicant's failure to file his appeal within time, is delay in obtaining a copy of a judgement and decree. Submitting in this point, he argued that, the decision was delivered on 4<sup>th</sup> December 2020. On 11<sup>th</sup> December 2020 the Applicant wrote a letter requesting to be availed with a copy of judgement and decree unfortunately, the documents were not given to him. He wrote reminder letters on 10<sup>th</sup> March 2021, 18<sup>th</sup> October 2021, 30<sup>th</sup> November 2021 and 7<sup>th</sup> December 2021

but in vain. The Applicant managed to obtain the documents on 14<sup>th</sup> December 2021.

The learned counsel submitted further that, he fell sick immediately after receiving the copies of the judgement and decree. He attached a copy of a medical chit to prove his sickness.

Aside from the delay of the applicant to lodge his appeal, the learned counsel argued that, proceedings of the trial Court are tainted with illegality. He submitted that, TPD being a Government institution cannot be sued without being issued with 90 days' statutory notice of intention to sue. He added that, in a suit against a government institution, Attorney General and the Solicitor general should be added as necessary parties. Citing the case of **Principal Secretary Ministry of Defence versus Devram Valambia**, he prayed that, the Court grant extension of time on the ground of illegality since Civil Case No. 100 of 2021 proceeded in contravention of section 6 of the Government Proceedings Act, [Cap. 5 R. E. 2019].

I have considered submission by the Applicants Counsel. I agree with the Applicant's counsel submission that Tanzania Commercial Bank being a public institution proceeding for and against the Bank are governed by the Government Proceedings Act. Section 6(2) and (3) of the Government

Proceedings Act requires the Plaintiff to issue 90 days' notice of intention to sue and serve the same to the Attorney General and Solicitor General. Unfortunately, the Plaintiff in Civil Case No. 100 of 2021 did not issue such a notice. In addition, all cases against and for Government institutions should be lodged before the High Court as per dictates of Section 6(4) of Government Proceedings Act. Civil Case No. 100 of 2021 was determined by the Resident Magistrate Court of Dar es salaam at Kisutu which basically does not have jurisdiction to entertain cases instituted against and by Government institutions. Thus, despite the delay in filing his appeal which in my view has been successfully accounted for, the proceedings of the trial court are tainted with illegality.

When illegality is raised as a ground for extension of time and the same is proved to exist on face of record, the Court need to grant the application for extension of time to a party wishing to pursue court proceedings against the identified illegality. The Courts have always considered illegality to be among good grounds that may be considered in applications for extension of time. See the case of **Exim Bank (Tanzania) Limited Versus Johan Harald Christer Abrahamson and 3 other**, Civil Reference No. 11 of 2018 Court of Appeal of Tanzania at Dar es salaam.

I have considered illegality in proceedings of the trial Court and find it necessary to enlarge time for the Applicant to file his appeal so that the highlighted illegality can be addressed properly by the Court. For that reason, the application is hereby granted.

The Applicant should file his appeal within 30 days from the date of extraction of the drawn order from this ruling. Given circumstances in this application, I do not award costs.

Dated at Dar es salaam this 10<sup>th</sup> August 2022



  
**Z. D. MANGO**  
**JUDGE**