

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO.97 OF 2022**

*(Originating from the decision of the Kibaha District Court in Civil Application No. 2 of 2022 and Civil Case No. 49 of 2021)*

**EWALD CASMIR SIRIWA.....1<sup>ST</sup> APPELLANT**

**ESTHER EWALD SIRIWA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**TCCIA PWANI SACCOS.....RESPONDENT**

**JUDGMENT**

*Date of Last Order: 07/10/2022*

*Date of Judgment: 13/10/2022*

***Kamana, J:***

Ewald Casmir Siriwa and Esther Ewald Siriwa, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants, were Defendants in Civil Case No. 49 of 2021 in Maili Moja Primary Court in which TCCIA Pwani SACCOS, the Respondent, was the Plaintiff. In that case, the Respondent was seeking order of the Court that the Appellants be compelled to meet their debts payment to the tune of Tshs.32,170,201/-. That amount was comprised of the principal debt, interest, penalty and costs incurred by the lender (Respondent) in making followups with regard to the debts.

In the course of hearing, the Parties at their instance decided to conclude a deed of settlement through which the Appellants agreed to meet the debts payment amounting to Tshs.32,170,201/-. Upon concluding the deed of settlement, the same was submitted before the Court and registered as the judgment of the Court in Civil Case No.49 of

2021. The decision of the Court to that effect was pronounced on 26<sup>th</sup> July,2022.

On 4<sup>th</sup> January,2022, the Appellants knocked the doors of the Kibaha District Court by way of chamber summons seeking an extension of time to file an appeal against the judgment of the Primary Court in Civil Case No. 49 of 2021. In their joint affidavit, the Appellants submitted, among other things, that the judgment of the Primary Court was tainted with illegalities as it did not had jurisdiction to entertain a civil case involving a claim of Tshs. 32,170,201/-.

Upon hearing both Parties, the District of Kibaha decided in favour of the Respondent. Aggrieved by that decision, the Appellants preferred this appeal on the following grounds:

1. That the Honourable Magistrate erred in law and fact to hold that the trial Court (Maili Moja Primary Court) had jurisdiction to entertain Civil Case No. 49 of 2021 which involved the claim of Tshs. 32,170,201/-.
2. That the Honourable Magistrate erred in law and fact for failure to appreciate the issue of illegality arising from the challenged jurisdiction of the Primary Court as the sufficient reason for extension of time to file an appeal in the District Court.
3. That the Honourable Magistrate erred in law and fact to assume her opinion while composing the ruling, that, out of the 32,170,201/- claimed by the Respondent against the Appellants some were specific damages and other

general damages the facts which were neither pleaded nor justified by any party in this matter.

In the appeal at hand, the Appellants were represented by Mr. Johnstone Mwanukuzi, learned Counsel and the Respondent was unrepresented. With the leave of the Court, each Party submitted by way of written submission.

In supporting the appeal, Mr. Mwanukuzi, learned Counsel combined the first and second grounds. He submitted that the claimed amount (Tshs.32,170,201/-) was the specific claim which ought to determine whether the Primary Court had a jurisdiction to entertain the matter. It was his submission that what was claimed by the Respondent was principal debt (loan), interests and other charges which in total were Tshs. 32,170,201/. Further, Mr. Mwanukuzi submitted that the loan, interests and charges to the tune of Tshs. 32,170,201/- were created by a loan agreement between the Parties and in that total amount there were no general damages.

In substantiating his arguments, the learned Counsel submitted that, since Tshs.32,170,201/- were specifically claimed by the Respondent, the Primary Court did not have jurisdiction to entertain the matter as per section 18(1)(a)(iii) of the Magistrates Courts Act, Cap.11 [RE.2019] which limits pecuniary jurisdiction of that Court to thirty million shillings. In his views, before the District Court there was an illegality issue which was a sufficient reason for that Court to extend the time for lodging an appeal.

Submitting in support of third ground, the learned Counsel averred that the District Court erroneously brought the issue of general damages as

part of Tshs.32,170.201/- . He contended that general damages were neither stated in the deed of settlement nor pleaded by the Respondent in its submission. In summing up, he prayed this Court to allow the appeal.

Relying on the first and second grounds, the Respondent argued that the cause of action that led to the Civil Case No. 49 of 2021 arose from two different contracts. It contended that the amount claimed against each Appellant includes the outstanding debt, interest and delaying penalty. It was its submission that the amount claimed against the 1<sup>st</sup> Appellant was Tshs. 11,160,202/- and against the 2<sup>nd</sup> Appellant was Tshs.20,669,999/-. In those amounts, according to the Respondent, there were also damages and interest thereon which was agreed and admitted by the Appellants in the settlement deed. The Respondent submitted that under such circumstances, to argue that the claimed amount exceeds the pecuniary jurisdiction of the trial Court is a misconception of the law on the part of the Appellants.

Responding on the issue of illegality, the Respondent was of the view that according to rule 52 of the Magistrates' Court (Civil Procedure in Primary Courts) Rules, the Primary Court has powers to record agreements concluded by Parties and such recorded agreements have the same effect as if they were the decisions of the Court. It was its submission that since the deed of settlement was recorded by the trial Court, such deed has the same effect as the judgment of the said Court. Further, the Respondent contended that the Appellants are precluded to raise the issue of illegality at this stage as the same was not raised in the trial Court and in the District Court.

With regard to the third ground, the Respondent submitted that its statement of claim filed on 18<sup>th</sup> day of June,2021 depicts that the claimed amount of Tshs.32,170,201/- includes loan debt, interest and default penalty. In summing up, the Respondent contended that this appeal is an attempt by the Appellants to avoid their liability and hence prayed this Court to dismiss the appeal.

In rejoicing, the learned Counsel for Appellants reiterated their submissions in submission in chief. He further contended that the Respondent has conceded that the said amount claimed was specific and did not include general damages.

Having gone through the rival arguments, the issue for determination of this Court is whether the District Court of Kibaha exercised its discretion judiciously in determining the application for extension of time.

Principally, powers to extend time are exercised by the courts in their discretion. Despite those discretionary powers, such powers must be exercised judiciously. In exercising the powers judiciously, Courts are guided by a number of principles developed through case laws. These guiding principles are, in effect, safeguards for ensuring that the discretionary powers are not used capriciously. In the case of **Mselemu Kandili v. Waziri Thabiti**, Criminal Appeal No.396 of 2019, the Court of Appeal accentuated the importance of exercising the powers of extending time judiciously by stating:

*'That discretion however, we hasten to add, must be exercised judiciously upon sufficient reasons being demonstrated by the applicant. More importantly, the court has power under the law to grant an extension*

*of time if sufficient cause has been shown for doing so.'*

In their Application in the District Court of Kibaha, the Appellants advanced illegality of the judgment of the Primary Court as a reason for applying for the extension of time. For this ground to warrant extension of time, the illegality in question should be apparent on the face of record. In other words, illegality should not be the one which entails long arguments and processes to determine its existence. In the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No.2 of 2010, the Court of Appeal stated:

*'Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrate 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 also 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.'*

Illegality in question is on the issue of jurisdiction which in essence is of sufficient importance. As rightly contended by the Appellants, the

pecuniary jurisdiction of primary courts as per section 18(1)(a)(iii) of the Magistrate Courts Act is not more than Tshs.30,000,000/-. The impugned decision of the Court awarded the Respondent with Tshs.32,170,201/-. This is apparent on the face of the record.

This Court is of the position that the District Court of Kibaha did not exercise its discretion judiciously for failing to recognise that the issue of jurisdiction was apparent on the face of the record. Further, it is a considered view of this Court that the District Court of Kibaha turned itself into an appellate Court by determining the issue of illegality on merits which was premature before it. What the Appellants wanted from that Court was an order of extension of time on the ground of illegality and not determination as to whether there was illegality or otherwise. In this point, I am persuaded by my learned Brother Kakolaki, J in the case of **Sakina Issa v. Rashid Juma**, Misc. Civil Application No. 55 of 2021 in which he observed:

*'While I am alive to the fact that it is not the duty of this court to determine whether the reason advanced is an illegality of the decision or not, I am duty bound to satisfy myself that the same is apparent on record and is not drawn from a far or long process or argument.'*

That being the position, the District Court of Kibaha went too far in handling the Application before it. What was supposed to be done by that Court was to establish whether there was an illegality on the face of records and not to determine on whether the reason advanced was an illegality. The determination of illegality so far as Application for

extension of time is concerned is the domain of the Court when exercising appellate or revisional jurisdiction.

Since the District Court of Kibaha misdirected itself when dealing with the application for extension of time and provided that I have been satisfied that the issue of illegality has sufficiently raised by the Appellants, I allow this appeal. Further, I extend time for the Appellants to file their appeal within fourteen days from the pronouncement of this Judgment. The appeal should be heard by another Magistrate other than the one who determined the Application. No order as to costs.

It is so ordered.

Right to appeal explained.

**DATED** at **DAR ES SALAAM** this 13<sup>th</sup> day of October, 2022.



KS KAMANA

**JUDGE**



Delivered at Dar es Salaam in Chambers this 13<sup>th</sup> day of October, 2022

in the presence of both Counsel for both parties.