

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

AT MWANZA

MISC. CIVIL APPLICATION NO.12 OF 2022

(Arising from Pc Civil Appeal No. 24 of 2021 Originating from Civil Revision No. 5 of 2018 and Probate Cause No. 72 of 1988 at Mwanza Urban Primary Court.)

ROBERT MAZIBA..... APPLICANT

VERSUS

EMIL MAZIBA @ ERASTO MAZIBA..... RESPONDENT

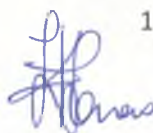
RULING

19th August & 21st October, 2022

ITEMBA. J.

The applicant Robert Maziba, has filed this application moving the court to grant an extension of time within which to file an application for leave and certificate on point of law.

The grounds for extension raised in the applicant's affidavit are that there was a delay in issuance of the copy of judgement and therefore it was impossible for the applicant to form grounds to apply for leave and certificate on point of law without reading the impugned decision. The applicant's counsel Mr. Masoud Mwanaupanga, through his written submissions explained that, although the judgment was issued on 3rd of January 2022, the copy was delivered on 3rd of February. That, the time limitation to file this type of application is 30 days, therefore by the time

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he was receiving the copy of judgement, he was already out of time by 2 days. He states further that he prepared the present application and filed it on 11th of February 2022 which means he used only 8 days in preparation of the application. He also contended that the impugned decision is tainted with illegalities which require attention of the Court of Appeal stating that this court was supposed to have entertained the issue of jurisdiction of the District Court when it heard Civil Revision No. 05 of 2018 as the issue of jurisdiction is a matter of law. He further submitted that the District Court in determining Civil Revision No. 05 of 2018 was *functus officio* as there was a Civil Revision No. 05 of 1995 which was decided by the same court. He referred the court to the decision in ***Karori Chogoro v Waitihache Merengo***, Civil Appeal No. 164 of 2018, CAT Mwanza to that effect.

The respondent is opposing the application. Through his counter affidavit, he averred that the applicant has failed to account for the delay and he also objects that there is no illegality in the impugned decision. It was advocate Mnyiwala Mapembe's submission that the applicant herein has stated that he spent eight days preparing this application. He argued that to prepare a five-page application for eight days is an inordinate delay. He made reference to the case of ***Bushiri Hassan v Latifa Lukio***



Mashayo, Civil application No. 03 of 2007, CAT-Arusha in which it was held that for an order of extension of time to be granted the applicant must account for each day of delay. It was his humble view that the applicant has failed to account for each of the eight days he delayed.

On the issue of illegality pointed out by the applicant, the counsel for the respondent submitted that the applicant is misleading this court that his appointment as administrator was revoked by this court without him being heard. He insisted that there is no error apparent on the face of the judgment and decree in PC Civil Appeal No. 24 2021 (Manyanda, J) warranting extension of time.

In the rejoinder submission, the counsel for the applicant stated that the respondent's argument that spending 8 days preparing the application is inordinate cannot be right. He claimed that each case has to be determined according to its circumstances in so far as extension of time is concerned. He therefore maintained that spending 8 days preparing this application is reasonable hence, calling this court to exercise its discretion judiciously by granting the same. He cited the case of **Wambele Mtumwa Shahame v Mohammed Hamis**, Civil Reference No. 08 of 2016. He distinguished the case of **Lyamuya** (supra) cited by the respondent stating that the circumstances in this case are different.



As for the issue of illegality, he reiterated that this court did not determine the issue of the District Court being *functus officio* which raises the issue of jurisdiction. He claimed that the said issue is a point of law sufficient to grant extension.

Having gone through the rival submissions by both parites, I will be guided by the land mark case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) where the Court mentioned the following factors for consideration in deciding whether to grant extension of time;

- "(a) The applicant must account for all the period for delay;*
- (b) The delay should not be inordinate;*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged".*

Starting with the 1st ground, as already mentioned above, the delay is of 8 days. The applicant has explained, and there is no dispute that he received the copy of judgement on 3rd of February 2022, by then he was

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already late by 2 days. He prepared this application and filed it on 11th of February which was 8 days later. He believes 8 days were reasonable to prepare the application. In the opposite, the respondent strongly opposes this explanation stating that using 8 days in preparation of a 5 page application, is an average of preparing 2 pages per day, which is inordinate. I will diverge from the counsel for the respondent for the reasons that duration of preparation of an application can not be counted against the number of typed pages of the said application. I think preparing an application takes more than drafting of the application and that the actual drafting is the last stage. I therefore find that a duration of 8 days is a reasonable time to prepare an application that means the delay of 8 days is properly accounted for. This is an average of one week which can not be considered inordinate and the applicant's counsel was strident enough in preparation of the application, hence not negligent.

That being said, I am content that the applicant has established a sufficient cause for extension of time to be granted. For that reason, I will not go further and examine the remaining grounds for extension of time which were mentioned by the applicant.

In the end, the application is hereby allowed. The applicant has to file his application within 21 days from the date of this ruling.

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Costs to follow the event.

Order accordingly.

DATED at **MWANZA** this 21st day of October 2022.



L. J. ITEMBA

JUDGE

Ruling delivered under my hand and seal of the court in chambers,
in presence of the respondent appearing remotely via virtual court (audio)
and Ignas, RMA and in the absence of the applicant.

L. J. ITEMBA

JUDGE

21/10/2022