

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 616 OF 2020**

*(Originating from Miscellaneous Civil Application No.256 of 2015)*

**LIGHTNESS FRANCIS ..... APPLICANT**

**VERSUS**

**GODSON WILLIAM MAKANGE** (Administrator of the estate of the late

Willy Stanley Makange .....**1<sup>ST</sup> RESPONDENT**

**CRDB (1996) LTD LUMUMBA BRANCH.....2<sup>ND</sup> RESPONDENT**

**OLDONYO LENGAI AUCTION MART.....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

*1<sup>st</sup> & 8<sup>th</sup> December, 2022*

**MWANGA, J.**

The Applicant is seeking extension of time to file notice of appeal out of time to the Court of Appeal against decision of the High Court in Miscellaneous Civil Application No. 256 of 2015. The application was brought under Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141[R.E 2019].

The journey of the applicant battling this matter started way back in the year 2005 in Civil Appeal No. 225 of 2005 which was filed in Kinondoni District Court. She was dissatisfied with the decision and attempted to challenge it at the High Court but it proved futile. The applicant then opted for an appeal to the Court of Appeal but an application for leave to appeal met with a serious blow. The court ordered withdrawal of an application with leave to refile.

The re-filed application was thrown out for being time barred and no extension of time was sought. She then filed Miscellaneous Civil Application No. 256 of 2015 seeking extension of time and the same was hammered for lack of sufficient reasons. It is her wish to pursue an appeal to the court of appeal against the decision in Miscellaneous Civil Application No. 256 of 2015 which was delivered on 21 May, 2020 but, the same requires extension of time within which to file application for leave out of time, hence this application. The same was filed in court on 26<sup>th</sup> November, 2020.

When parties appeared before Hon. Mgonya, J. for hearing, they agreed application to be argued by way of written submission. The 3<sup>rd</sup> respondent was all alone not present in court, hence publication in

Mwananchi News Paper was done on 27 August, 2022. The court then preceded exparte hearing against the third respondent.

In support of application, the applicant deposed at paragraph 5 of the affidavit that the delay was due to late observation that the decision to be challenged was tainted with illegalities which deserves the intervention of the court of appeal.

Apart from the contents of her affidavit, the applicant also raised two contentions in her submission. **One**, that there was illegality committed by the 1<sup>st</sup> respondent who mortgaged the matrimonial property (a house located at Ubungo Kisiwani on plot No. 24) without the applicant consent and that the high court did not take that into account. **Two**, that the intended appeal stands a chance to succeed if the order for extension of time is granted.

The 1<sup>st</sup> respondent deposed almost nothing therein. Ultimately, it was his statement that he leaves the matter to be decided by the court.

Per contra, the 2<sup>nd</sup> respondent contested the application. At paragraph 7 of the counter affidavit, it was deposed that late observation of the illegality of the decision to be challenged is not a sufficient reason justifying grant of the order sought. Again, it was deposed at paragraph 5 of the counter affidavit that there was no

illegality made in the decision of the court. The authority in **Heritage Insurance Company Ltd Vs Sabians Mchau & 2 Others**, Civil Application No. 284/09 of 2019; CAT(Unreported); was cited to the extent that, court is vested with discretionary powers on matters of extension of time but the same shall be exercised cautiously and by following the rules of reason and justice.

I have gone through the depositions and submission of the parties and wish to state that; there are quite good number of authorities in on which the court is guided before granting extension of time to the applicant. As rightly submitted by the learned counsel for the 2<sup>nd</sup> respondent, it is discretionary powers that shall be exercised cautiously and by following the rules of reason and justice. The same was echoed in **Lyamuya Construction Co. Ltd Vs Board of Registered of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011] CAT(Unreported) where it was held that;

***"As a matter of general principle, it is in the discretion of the court to grant extension of time but that discretion is judicial, and so it must be exercised according to the rules of reason and***

***justice, and not according to private opinion or arbitrarily”.***

Under the auspices of such authority, the court requires the applicant to account for all the period of delay and that such delay shall not be inordinate. It was stated further that the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. It was also the holding in that case that extension of time shall be granted 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.

In **VIP Engineering and Marketing Limited and Two Others Vs Citi Bank Tanzania Limited**, Consolidated Reference Nos. 6,7 and 8 2006 TZCA, the court added further that, not every error committed by a court amount to illegality. In another authority **in Shanti Vs Hindoche &Others [1973] E.A 207** it was held that the applicant does not necessarily have to show that the appeal has a reasonable prospect of success or even that he has an arguable case. In **Fares Munema Vs Asha Munema**, Civil Application No. 122 Of 2005(**Unreported**) **where the application was dismissed because** the applicant has failed to advance a reason or reasons to explain away

the delay in filing the intended application within time to warrant the exercise of Court's discretionary power.

In **Deusdedit Kisisiwe Vs. Protaz Bilauri**, Civil Application No. 49 Of 2004; CAT (Unreported) the court held that;

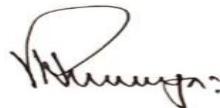
***'As observed earlier, this application is for extension of time within which to apply for leave to appeal to this Court. Although basically it has not seriously been controverted by the respondent, yet this does not preclude the Court from considering whether the applicant has shown sufficient reasons for his delay, and whether the intended appeal has arguable points'.***

On account of the issues relating to illegality, I hasten to state that the same ought to be discussed by the appellate court, that is after the applicant is granted the extension of time by this court. Otherwise, it would be like re-opening the matter which the applicant is seeking to challenge to the court of appeal. In the second place, contention of illegality was raised outside the applicant affidavit. The court of appeal in **Registered Trustee of the Archdiocese of Dar es salaam Vs Bunju Village**

**Government & 4 Others**, Civil Appeal NO. 147 of 2006TZCA, (Unreported) held that evidence must be given in the affidavit not in submission. I therefore cannot act on the counsel's submission in that regard.

Having said all that, the application has no merits. It is therefore dismissed with costs.

It is so ordered.

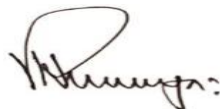


**H. R. MWANGA**

**JUDGE**

**08/12/2022**

**COURT:** Ruling delivered in the presence of the applicant in person and absence of the respondents.



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**H.R MWANGA**

**JUDGE**

**08/12/2022**