

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 209 OF 2020**

(Arising from PC Civil Appeal No. 49 of 2019)

**ZAITUNI AMIRI SAIDI .....APPLICANT**

**VERSUS**

**SELEMANI RASHIDI KILO..... RESPONDENT**

**RULING**

*02/09/2021 & 28/10/2022*

**S.M. KULITA, J.**

According to the records from which this matter arises, that is PC Civil Appeal No. 49 of 2019 High Court Dar es Salaam zone, the Applicant herein ZAITUNI AMIRI SAIDI who was the Respondent in that case, raised a Preliminary Objection that the appeal lodged by the Respondent herein, SULEIMAN RASHID KILO was time bared. The court ordered the said Preliminary Objection to be argued by way of written submissions and the scheduling order was accordingly provided. However, it happened that the Applicant delayed to file her submission in time, hence this application, that the time be extended for her to file her submission in chief.

The reason behind the delay, according to the Applicant, ZAITUNI AMIRI SAIDI is that on the 14<sup>th</sup> day of April, 2020, which was the last date for her to lodge the written submission, the Court's Accountant who was responsible for collecting the court fees was absent due to the sickness.

The Applicant attempted to go to the Court of Appeal premises to effect the said payment of court fees in vain, she found the Accountant already closed the desk and left as the working hours had gone. The Applicant said that, for that reason she was unable to lodge the submission in time. She concluded that, as the cause of delay was beyond her control, that it was not caused by her negligence, she prays for this court to re-issue the scales of dates for filing the written submissions on the Preliminary Objections.

In reply thereto, the Respondent, SULEIMAN RASHID KILO stated that the Applicant was negligent for failure to lodge her written submission in time. He said that the Applicant was given 14 (fourteen) days to file the submission but she decided to deal with the matter on the deadline. The Respondent prayed for the application to be dismissed.

From the pleadings and submissions lodged before this court, I have noticed that the Applicant herein seeks for this court to re-issue scales of dates to file written submissions. Though the matter does not directly state that it is

for for the extension of time, in reality that is a concept. The Applicant seeks for this court to extend time for her to file the written submission in support of her Preliminary Objection.

In dealing with the applications involving extension of time, among other things, the court has to regard the issue of **illegalities** contained in the impugned matter. If the same is proved to exist, it can be a sufficient ground for extension of time. See the case of **John Tilito Kisoka v. Aloyce Abdul Minja, Civil Appeal No. 3 of 2008, CAT at Arusha (unreported)**. The said **illegalities** must be apparently seen on the face of the records. This was held in **Ngao Godwin Rosela v. Julius Mwarabu, Civil Appeal No. 10 of 2015, CAT at ARUSHA (unreported)**.

In the matter from which this application arises, PC Civil Appeal No. 49 of 2019 High Court Dar es Salaam zone, there is no dispute that the Applicant herein delayed to file his written submission in 14 days that was fixed by the court. The reason behind according to the applicant is that, it was caused by the matters that she has stated in her submission and affidavit. She said that the delay was caused by the matter which was beyond her control, that the Accountant was not present to receive the court fees that she had intended to pay for the submission.

In determining this matter, I find it convenient to start with the issue of **illegality**, as the same can determine the matter to finality without dealing with the other grounds for extension of time, if proved to exist.

Actually, the **illegalities** are apparently seen on the face of the record in the PC Civil Appeal No. 49 of 2019 r. As it can be read in the original record, the Applicant raised the Preliminary Objection that the appeal is time bared. The said Preliminary Objection yet to be argued.

The court record in the said PC Civil Appeal No. 49 of 2019 High Court Dar es Salaam zone transpires that it was lodged on the 1<sup>st</sup> day of November, 2018 while the impugned judgment of the District Court, Temeke, from which the said appeal arises, was delivered on the 28<sup>th</sup> day of August, 2018. It means the appeal to the High Court against the decision of the District Court was lodged after the lapse of 64 days. **The Magistrates' Court Act [Cap 11 RE 2019]** provides under **section 25** the duration of 30 days' as the prescribed time limit to lodge the appeal at the High Court, for the matters arising from the District Court whose origin is the Primary Court.

Unless it comes to be otherwise determined upon hearing the raised Preliminary Objection, that **illegality** which can be seen on the face of the record of which, if sufficiently proved, the said PC Civil Appeal No. 49 of 2019

High Court Dar es Salaam zone will not have legs to stand. That attracts me to allow the prayer.

That being the case, I find this application meritorious just for the said reason of **illegality**, that, hearing of the Preliminary Objection will determine the legality of the PC Civil Appeal No. 49 of 2019 that the Respondent herein, SULEIMAN RASHID KILO has lodged, if it was proper for the same to be filed before the court without leave.

In upshot the application is hereby allowed. The time is extended for the Applicant herein to file her written submission in support of the Preliminary Objection. The scheduling order will be created by the current trial Judge in the PC Civil Appeal No. 49 of 2019. No order as to costs.



**S.M. KULITA**  
**JUDGE**  
**28/10/2022**

