

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

**(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

**AT PAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 157 OF 2022**

*(Arising from conviction and sentence in Economic Crimes case No. 20/2019 before RMS Court of Dar es salaam at Kisutu, - Shaidi PRM.)*

**OLAF PETER MUMBURI ..... APPLICANT**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT**

**RULING**

*12<sup>th</sup> & 16<sup>th</sup> December 2022*

**MKWIZU, J.**

The Applicant OLAF PETER MUMBURI has through a chamber summons made under sections 14(1) of the Law of Limitations Act, (Cap 89 RE 2019), and section 361 (2) of the Criminal Procedures Act, (Cap 20 RE 2019) filed this application seeking for enlargement of time within which to lodge a notice of appeal and petition of Appeal against conviction and sentence by the Resident Magistrate Court of Dar es salaam at Kisutu in Economic Crimes Case No. 20 of 2019 (Hon Shaidi PRM) dated 11<sup>th</sup> April 2019. The application is supported by three affidavits one by the applicant himself, the second one by Andrew Lupembe, Vodacom Tanzania (Plc) network Director, and the third affidavit by Gasper Nyika, applicant's advocate all sworn on 4<sup>th</sup> November 2022. The respondent did not file a counter affidavit.

On the day when the application was called on for hearing, the applicant was represented by Mr. Gasper Nyika, learned counsel, while Mr. Laiton Muhesa Principal State Attorney and Ms Jennifer Msue senior State Attorney appeared for the respondent/Republic.

In his submissions Mr Nyika said, extension of time is only granted upon sufficient reason by the applicant including an illegality on the decision sought to be appealed against. And that if sufficiently disclosed, illegality alone without more suits a ground warranting the court to extend time. He on this cited the Court of Appeal decisions in **Mohamed Salum Nahdi V Elizabeth Jeremiah**, Civil Reference No 14 of 2017 (Unreported) and **Principal Secretary, Ministry of Defence and National Service V Devram Valambhia** (1992), TLR 185.

Referring to paragraphs 11,13,14,15,16,17,18,19 and 22 of the applicant's affidavit, Mr. Nyika was to the point that the applicant's application is based on the illegality of the proceeding leading to the impugned decision as the sole ground. He contended further that the alleged points of illegality are obvious on the face of the trial court's record and therefore a sufficient ground to support the application as held in **Michael Adrian Chaki V R**, Criminal Appeal No 399 of 2019, **Ally Shabani Swalehe V R**, Criminal Appeal No 351 of 2020, and **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (All unreported). He thus urged that time be extended as prayed.

In her response, Ms Jenipher said the applicant has failed to point out the point of illegality appearing on the face of the record and therefore the application should be rejected.

In a brief rejoinder, Mr Nyika reiterated what he submitted earlier and emphasized that the application be granted.

I have considered the application and parties' submissions. It is evident that the application before me is premised under section 361(2) of the CPA where time to file an appeal can be extended upon sufficient reasons by the applicant. As stated above, the only ground in support of application is illegality on the proceedings resulted into the impugned decision. This is apparent in paragraphs 11,13,14,15,16,17,18,19 and 22 of the applicant's affidavit.

I am aware of the position of the Court of Appeal that, a ground alleging illegality constitutes good cause for extension of time provided that it is discernible on the face of the records as stated in **Principal Secretary Ministry of Defence and National Service vs Devram Valambhia** (supra) where the Court held *inter alia* that:

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the alleged illegality is established to take appropriate measures to put the matter and the record right"*

And in **Lyamuya Construction Company** (supra) the Court said:

*"Since every party intending to appeal seeks to challenge the decision either on points of law or facts, it cannot in my view,*

*be said that in Valambhia's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an 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".***  
**(Emphasis added)**

Rephrasing the applicant's affidavit, Mr Nyika pointed out that the proceedings leading to the impugned decision are tainted with illegalities namely failure by the trial Magistrate to explain to the accused person elements of the offence contrary to section 228 of the CPA; failure to record the accused's admission of the elements of the offence; failure to give the accused an opportunity to dispute or explain the facts or to add anything to the facts subject of the charges and failure by the trial Magistrate to note that the mitigation on behalf of the accused was a repudiation of the accused's plea rendering it equivocal.

The main question here is therefore whether the pointed-out illegalities are visible on the face of the records to qualify sufficient grounds for enlargement of time. I have revisited the affidavit in support of the application and all annexures including the trial court's proceedings. According to the trial courts records, applicant's conviction and sentence was based on their own plea of guilty entered on 03/04/2019. To avoid going into the merit of the intended appeal, I would briefly say, it does not require a long-drawn process to detect the alleged contentions by the

applicant. The points raised are apparent on the face of the records sufficiently to support the applicant's prayer.

In the premises, I find the application meritorious and proceed to grant the same. The applicant is given thirty (30) days from the date of this ruling to lodge the intended notice of appeal and the petition of appeal.

Order Accordingly.

DATED at DAR ES SALAAM this 19<sup>th</sup> day of December 2022.



**E.Y. MKWIZU**

**JUDGE**  
**19/12/2022**

