

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPLICATION NO.100 OF 2021.

(Originating from Civil Case No. 150 of 2010 before the High Court of Tanzania District

Registry at Dar es Salaam Before. Hon. Arufani J.)

ISHARA GODFREY PETER.....APPLICANT

VERSUS

CAMILIUS WAMBURA1st RESPONDENT

F. 6041 PC. JOHN.....2nd RESPONDENT

INSPECTOR GENERAL OF POLICE3rd RESPONDENT

THE ATTORNEY GENERAL4th RESPONDENT

RULING

MRUMA, J.

This application is made under section 11(1) of the Appellate Jurisdiction Act [CAP 141 R.E. 2019] and is seeking for extension of time for the Applicant to issue notice of appeal to the Court of Appeal to challenge the decision of this court in Civil Case No.150 of 2010.

The Applicant who was the Plaintiff in Civil Case No.150 of 2010 instituted a suit, claiming that he was maliciously prosecuted by the Respondents herein. The claims for malicious prosecution were founded on criminal Case No.17 of 2006 which was instituted before Mkuranga District Court against the Applicant. That, criminal Case ended with

Applicant being convicted and sentenced to thirty(30) years in prison but later on he successfully appealed in this court against that order. The conviction was quashed and Applicant was pronounced a free man.

After that acquittal the Applicant instituted Civil Case No.150 of 2010 in the High Court of Tanzania at Dar –es salaam which ended up in being dismissed. In its findings the High Court found inter alia that a conviction which is overturned on appeal cannot be a ground for malicious prosecution case.

In the present application the Applicant asserts that he was prosecuted maliciously in primary court but was acquitted on appeal. He said that his application has overwhelming chance of success if the Application is allowed.

As is the practice the application was supported by the affidavit of Applicant herein; ISHARA GODFRREY PETER stating the reasons upon which the application is made.

At the hearing the Applicant was represented by Mr. Aman Joachim learned advocated while Miss. Lilian Machage learned State Attorney appeared for the respondents.

Submitting in support of the application, counsel for the applicant stated that the applicant as applying for extension of time within which he can file a notice of appeal to challenge the decision of this court in Civil Case No.150 of 2010. In that case the Applicant was suing for malicious prosecution and the claim arose from Criminal Case No.07 of 2006 which was before Mkuranga District Court.

The main contention of this application is illegality in respect of acquittal of the Applicant. The learned counsel for the Applicant argued this court to be guided by the decision of the Court of Appeal in the case of *Principal Secretary Ministry of National Service vs D. Valambia [1992] TLR pg 182* and also *Vip Engineering and Marketing Ltd vs City Bank* (un- reported)

Counsel for the Respondents in her submission in reply stated that counsel for the Applicant had failed to explain as to when he took action. She said that extension of time is purely discretion powers of the court which must be exercised judicially. She said that the period of three years elapsed before the Applicant could file this application and the reason stated could not amount to illegality. She said that the Valambia's case and other cases cited do not support this application and they are distinguishable. She contended that the Applicant failed to give good ground to warrant extension and she prayed that the application be dismissed with cost.

In brief rejoinder Counsel for Applicant, reminded the court that this application is based on the illegality found in the decision of this court in Civil Case No.150 of 2010. He said that it is on that bases the application had not explained reason for his delay.

I have carefully considered the submissions of both parties. It is to the understanding of this court that extension of time in this case is sought based on illegality in Civil Case No.150 of 2010 which was dismissed on 12th December, 2017.

It is trite law that in any application for extension of time reason for delay must be given unless the application is hopeless

[see; *Civil Reference No. 08 of 2016 C.A. (un - reported case), BUSHIRI HASSAN VS LATIFA MASHAYO, Civil Application No.3 of 2007*] Where was held that delay even of a single day has to be accounted for, otherwise, there will be 'no point of having rules prescribing period within which certain step have to be taken"

Similarly where illegality is alleged, it must be demonstrated.

In the present application the Applicant did not account for every day of delay. This court is of the view that the Applicant's failure to account for the delay to file notice of appeal is incurable and renders this application devoid of merits.

On the illegality, nothing was demonstrated to constitute illegality. Dismissal of a case or acquittal of an accused person do not constitute illegality. Similarly the finding that the plaintiff failed to prove that he was maliciously prosecuted does not constitute illegality.

For those reasons, the application is dismissed with Costs.


A. R. Mruma

Judge

19/1/2022