

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

**DISTRICT REGISTRY**

**AT TABORA**

**PC. CRIMINAL APPEAL NO. 5 OF 2021**

*(Originating from Uyui District Court in Criminal Application No. 5/2021 and  
Ilolangulu Primary Court)*

**SAID MATATA .....APPELLANT**

**VERSUS**

**MATHIAS MCHIMBUDA.....RESPONDENT**

**JUDGMENT**

*Date:6/3/2023 & 21/4/2023*

**BAHATI SALEMA, J.:**

This matter originated from Criminal Case No.58 /2020 in Ilolangulu Primary Court- Tabora where the appellant was charged for obtaining credit by false pretence contrary to section 305 of the Penal Code, Cap.16 and was sentenced to a non-custodial sentence of three months and pay TZS.2,956,000/=

Distressed with the impugned decision the appellant, **Said Matata** filed an application for an extension of time. Upon hearing the grounds of application, the District Court of Uyui dismissed the Misc. Criminal

Application No. 01 of 2021 for the reason that the applicant had not adduced sufficient reasons for an extension of time.

Still dissatisfied with the court decision, the appellant now appealed to this court filing three grounds;

- i. That the learned magistrate erred in law and facts in the exercise of its discretion by holding that there was no sufficient ground to grant the prayer for an extension of time to appeal,*
- ii. That the learned trial magistrate erred in law and facts in its findings without taking into consideration the evidence adduced in the affidavit of the appellant,*
- iii. That the learned magistrate erred in law and facts when she discarded the ground of illegality without proper scrutiny and ascertainment of the same in the circumstances of the case at hand.*

When the matter was called on for hearing the appellant was represented by Mr. Kelvin Kayaga, learned counsel whereas the respondent was unrepresented. The arguments for and against the application were made orally.

Submitting on the first and second grounds of appeal, Mr. Kayaga stated that the appeal arose from the Misc. Criminal Application No. 01/2021 in the District Court of Uyui where the applicant requested an extension of time against the decision of Ilolangulu Primary Court Criminal Case. The District Court dismissed the appeal on the reason that

the applicant failed to explain the illegalities, as well as the applicant failed to account for each day of delays.

He advanced further that the Magistrate did not consider the affidavit which explained the days of delay from 4/12/2020 to 22/2/2021 when the application was filed at a District Court. Had he concentrated the date for filing as 3/1/2021 the time would have elapsed until 22/2/2021 it was a delay of 50 days which was accounted for from the affidavit.

In total, he stated that the appellant was sick and could not walk and he was relieved on 8/2/2021 and made a follow-up to Ilolangu upon arrival he found the judgment was ready for collection on 4/2/2021. Furthermore, he stressed that from 9/2/2021 up to 16/2/2021, the appellant made a follow-up, and that is when his application was prepared and submitted electronically. He strenuously stated that the days were accounted for. Amplifying his argument on credibility Mr. Kayaga cited the case of **Goodluck Kyando V. Republic** [2006] T.L.R. 363 that each witness is entitled to be believed. In this case, the District Court did not give reasons for rejecting the applicant's reasons which were against the law as in the case of **Tanzania Breweries Limited V Anthony Nyingi**, TLR 99 on page 104. He lamented that the District Court did not state the reasons for the rejection. The appellant delayed for 50 days since he was sick and the court did not consider it. To substantiate his stand he referred to the case of **Murtaza Mohamed Raza Viran &**

**Another V Mehboob Hassanali Versi**, Commercial Case No. 281 of 2002 that given sickness is a condition which is experienced by a sick person. The court did not use its discretionary power to dismiss it.

On the third ground of appeal, he submitted that there were illegalities and irregularities enumerated in paragraph 7 of the affidavit that violated the principle of natural justice against the applicant, the applicant was unlawfully convicted on a defective charge which did not establish the offence charged and the trial court lacked jurisdiction to try the matter. He further stressed that those are legal grounds for the extension which the appellant was not supposed to argue. These illegalities were one of the criteria. In the case of **Hamida Mdida and Said Mmbongo V The Registered Trustees of Islamic Foundation**, Miscellaneous Land Case Application No.43 of 2020 quoting the landmark case of **VIP Engineering and Marketing Limited and Two others Vs Citibank Tanzania Limited Limited Consolidated Civil Reference No. 6,7,8 of 2006** (unreported) where the court held that when the issue of illegality is raised in the impugned decision that amounts to a good cause for an extension of time. He prayed this court extend the time for the appellant to file an appeal against the decision of the trial court.

Objecting to the appeal, the respondent disputed that the appellant was not sick as he attended the matter at the trial until the end of the suit. He submitted that the appellant engaged a legal counsel at

the District Court level. He went further to submit that the appeal should not be allowed as the appellant has not accounted for each day of delay. He prayed to this court to dismiss since the grounds are unmerited.

Rejoining, reiterating his submission in chief, Mr. Kayaga stated that there was no evidence from the counter affidavit in respect of sickness.

Having heard the parties' rival submissions and scrutinized the court's records, the matter for contention is whether this appeal is meritorious.

The law is settled that extension of time is not an absolute right but it is based on the court's discretion.

To begin with, the first ground of appeal that the learned magistrate erred in law and facts in the exercise of its discretion by holding there was no sufficient ground to grant the prayer for an extension of time to appeal. The counsel for the appellant argued that the Magistrate did not consider the affidavit which explained the days of delay from 4/12/2020-22/2/2021 when the application was filed at District Court.

It is trite law that in an application for an extension of time, the applicant must account for each day of delay. In the case of **Bushfire Hassan v Latina Lucia Masanya**, Civil Application No.3 of 2007

(unreported) the Court of Appeal of Tanzania when addressing the issue of delay held that:

*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken ..."*

In this matter at hand, I agree with the District Court of Uyui that the appellant had not accounted for each day of his delay properly since the evidence adduced in the affidavit of the appellant is doubtful. As far as the length of the delay is concerned the applicant's application cannot stand because he did not account for each day of delay at all. The applicant should have produced some evidence to support his claim as per the case of **Paskaria Steven Kakoroja V Nyanswe Mwita Tambara**, Misc. Land Appeal No. 47 (2021) HC Musoma that;

*"Sickness is proved by medical evidence, and the appellant has to show how the sickness barred her from appealing in time."*

In this case, the appellant submitted that he was sick but there is no proof for that assertion.

Coming to the third ground of appeal that the learned magistrate erred in law and facts when she discarded the ground of illegality without proper scrutiny and ascertainment of the same in the circumstances of the case at hand. Mr. Kayaga contended that there are illegalities that

were not argued but the court should extend time regardless of being discussed.

Although in this aspect, I differ with Mr. Kayaga the counsel for the appellant on his argument that the illegalities should only be mentioned, it is my considered view that, when requesting an extension of time, it is important to provide a clear and candid explanation for why the extension is needed. Simply mentioning that there are legal issues or constraints without providing a clear explanation may not be sufficient, as the party receiving the request may not fully understand the situation or may require additional information to grant the extension.

However, the court upon traversing the entire court records and noted some issues which need court intervention. It is trite law that an application for an extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

In respect of illegality. It has been held many times that where illegality exists and is pleaded as a ground the same as well constitute a good cause for an extension of time. This principle was emphasized in the case of **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania)**



**Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported) and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (Unreported). In the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (supra) the Court of Appeal of Tanzania held that: -

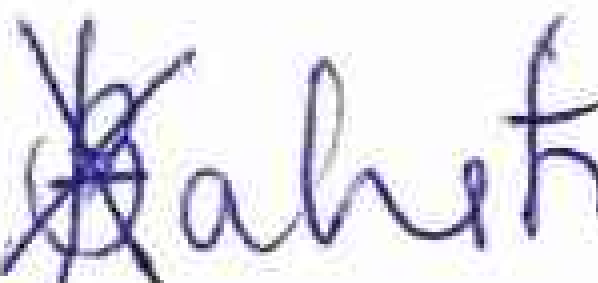
*"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality is established, to take appropriate measures to put the matter and the record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

In my considered view, this point of illegality meets the requisite threshold for consideration as the basis for the enlargement of time and this alone is weighty enough to constitute sufficient cause for an extension of time.

For the foregoing reasons, the application is meritorious and it is accordingly granted. The application should be lodged within 30 days from today. Each party is to bear its costs.

Order accordingly.



  
**A. BAHATI SALEMA**  
**JUDGE**  
**21/4/2023**



**Court:** The judgment delivered in absentia.



**A. BAHATI SALEMA  
JUDGE  
21/4/2023**

Right of Appeal fully explained.



**A. BAHATI SALEMA  
JUDGE  
21/4/2023**