

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

CIVIL APPEAL NO. 08 OF 2023

(Originating from Misc. Civil Appl. No. 16/2022 before Hanang District court)

HERMAN PETRO TORONTI.....APPELLANT

VERSUS

AGASTO JAPHARY KIDAULA.....RESPONDENT

JUDGMENT

15th & 16th June, 2023

Kahyoza, J.:

Herman Petro Toronti sued **Agasto Japhary Kigaula** before the primary court. The primary court partly allowed **Herman Petro Toronti's** claim. As he delayed to appeal to the district court, **Herman Petro Toronti** applied for extension of time. The district court dismissed **Herman Petro Toronti's** application for extension of time to appeal. Dissatisfied, **Herman Petro Toronti** appealed to this court.

Herman Petro Toronti raised three ground of appeal which culminated to the following issues-

1. did the district court fail to evaluate reasons for extension of time?

2. did the district court fail to consider and evaluate submissions?
3. Is the decision illegal for being wrong titled?

It is on record that **Herman Petro Toronti** sued **Agasto Japhary Kigaula** before the primary court which delivered its judgment on 29.4.2022. The record further depicted that the primary court delivered the judgment in the presence of the parties, allowing part of **Herman Petro Toronti's** claim. He claimed Tzs. 21,000,000/= and the primary court awarded him Tzs. 3,749,998/=. Neither **Herman Petro Toronti** nor **Agasto Japhary Kigaula** appealed against the decision of the primary court. **Herman Petro Toronti**, the decree holder, applied for execution on 31.5.2022.

Later, on 26. 8.2022 **Agasto Japhary Kigaula** applied for extension of time to appeal against the decision of the primary court, which was delivered in his presence on 29.4.2022. **Herman Petro Toronti**, who had applied for execution of the decree, changed his mind, and applied to the district court for extension of time to appeal on 23.1.2023. **Herman Petro Toronti**, applied for extension of time after the expiry of **eight (8)** months from the date of delivery of the judgment and **seven (7)** months

from the date he applied for execution of the decree of the primary court, he sought to challenge on appeal.

The district court dismissed both applications for extension of time. Aggrieved, **Herman Petro Toronti**, appealed. At the hearing both parties were unrepresented and did not argue the appeal. I will determine the appeal based on the grounds of appeal.

Did district court evaluate reasons for extension of time?

Herman Petro Toronti, the appellant, complained that the district court did not evaluate the reasons for extension of time presented in the second ground of appeal. He also made a similar complaint in the second ground of appeal, where he lamented that the magistrate erred in law and facts by his failure to consider and evaluate the evidence. Thus, I consider the two grounds jointly. For that reason, the issue is whether the district court did consider and evaluate the grounds for extension of time.

I had a cursory review of the ruling of the district court which was titled judgment. To say the least the district court did consider the reasons for delay and the submission in support and those opposing the application. The appellant had submitted that he delayed as he was a

layperson, thus, not conversant with the law. The magistrate held that ignorance of the law was not a good ground for delay. I have no reason to fault him. It is trite law that poverty and ignorance of the law is not a good ground for delay. See the decision of the Court of Appeal of Tanzania in the **Chairman Youth Society Vs John Ndazananye** Civ. Rev. No.3/1998 (CAT unreported) where it was stated that:

*"The law has even gone further to hold that **ignorance of law, old age or poverty** are not good grounds for allowing an application for leave to appeal out of time".*

It is on record that the appellant applied for execution of the judgment of the primary court very time in May, 2022. I cannot comprehend that after the primary court gave its judgment, the appellant knew the procedure of applying for execution but he did not know the procedure of lodging his appeal. I am of the view that the appellant was satisfied with judgment of the primary court. **Herman Petro Toronti** decided to appeal after **Agasto Japhary Kigaula**, the respondent, applied for leave to appeal out time. Thus, it is not true that **Herman Petro Toronti** delayed to appeal because did not know the law.

Further to that **Herman Petro Toronti** advanced illegality as a ground for extension of time. The appellant's ground of illegality was that; **one**, the judgment of the trial court was illegal for court's failure to award costs; **two**, the trial court misapprehended the evidence and **three**, the magistrate who determined the case was a material witness. The trial considered the alleged illegality and found that they did not pass the test. I, without much ado, I agree with the district court magistrate that the allegation that the judgment was illegal for the court not awarding costs and the judgment was illegal for failure to apprehend the evidence did not pass the threshold.

I am alive of the fact that, it is not the task of the district court to determine the illegality but to find out whether there exists the alleged illegality on the face of record. It is settled that to amount to a sufficient reason for delay, the alleged illegality must be clearly apparent on the face of the impugned decision. It should not be something, which will take a long-drawn process to decipher from the impugned decision to demonstrate the alleged illegality. See the case of **Ngolo Godwin Losero v Julius Mwarabu** Civil Application No. 10/2015 CAT at Arusha (unreported), where the Court of Appeal reiterated its decision in

Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application 2/2010 that-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Valambia 's case, the court meant to draw a general principle that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted 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 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.***

The Court in the case Certainly, it will take a long drawn process to decipher from the impugned decision the alleged misdirection or non-directions on the points of law." (Emphasis is added)

Given the above position of the law the district court had a duty to find out whether the alleged illegality was apparent on the face of record. The fact that the primary court did not award costs was not an illegality to support an application for extension of time. The court has a discretion to award costs; thus, it is not a legal duty to award costs. The primary court

abused its discretion but did not violate any law. I would not fault the district court for not giving it weight.

In addition, failure to evaluate evidence is good ground of appeal but not an illegality which amounted to good ground for extending time to appeal. I will not fault the trial court for disregarding the complaint.

Lastly, the appellant contended that another illegality was that the trial magistrate was a witness. The district court found that the magistrate was not a witness as he acted as a commissioner for oaths (notary public). He notarized the sale agreement between the parties. It is true that the magistrate misconducted himself to notarize the sale agreement and try the dispute from the said contract. The question is whether the alleged illegality is on the face of record of the impugned judgment.

Reading the judgment of the primary court, it would be difficult to tell that the trial magistrate notarized the sale agreement which was the source of dispute. Thus, the alleged illegality alleged is not clearly apparent on the face of the impugned decision. It is something, which will take a long-drawn process to decipher outside the impugned decision to demonstrate the alleged illegality. It does not pass the test also.

In the end, I do not find that the appellant established the alleged illegality and the district court ignored to consider the same. I also find that it not true that the district court did not consider the reasons for delay. It is my firm view that the district court considered them and found no merit whatsoever. The appellant was satisfied with the judgement of the primary court, that is why he applied for execution instead of appealing.

It should not escape our mind that the appellant delayed for eight months. The appellant did not account for such a length delay to appeal to the satisfaction neither of the district court not of this Court.

Is the decision illegal for being wrong titled?

The appellant complained that the decision of the district court was illegal for being wrongly titled as the judgment instead of ruling. The appellant did not explain the alleged illegality.

I wish to state at the outset that the district court decision was a ruling and not a judgment as it originated from an application for extension of time. The difference between judgment and ruling is semantic. It has no legal difference. The deference is between the two legal terms stems from practice and that is the reason why the appellant did not tell this Court which law the district violated. Both terms, judgment and ruling refer to

the decisions of a court. I do not find that to refer to the ruling as judgment and vice versa is fatal. Hence, I find no merit in the complaint and I dismiss it.

Eventually, I find the appeal without merit and dismiss it with costs.

I order accordingly.

Dated at Babati this 16th day of June, 2023.



A handwritten signature in black ink, appearing to read "John R. Kahyoza".

John R. Kahyoza, J.

Court: The Judgment delivered in the presence the appellant and the respondent. B/C Ms. Fatina present.

A handwritten signature in black ink, appearing to read "John R. Kahyoza".

John R. Kahyoza,

Judge

16. 6. 2023