

IN THE HIGH COURT OF TANZANIA

(MOROGORO- REGISTRY)

AT MOROGORO

MISC. CIVIL APPLICATION NO. 35 OF 2022

(Originating from Criminal Appeal Case No. 02 of 2022 from the District Court of Kilosa, Arising from Criminal Case No. 149 of 2021 from Masanze Primary Court)

MAKANYAGA HAMISI BILIKAAPPLICANT

VERSUS

ALLY KHALID KOMBA RESPONDENT

RULING

31st May, 2023

CHABA, J.

By way of chamber summons, Makanyaga Hamis Bilika, the applicant herein applied to this court for an order for enlargement of time within which to file an appeal to this court out of time against the ruling of the District Court of Kilosa, at Kilosa in Criminal Appeal No. 02 of 2022. The application was preferred to this court under section 25 (1) (b) of the Magistrate Courts Act, [CAP. 11 R. E, 2019] and it is supported by an affidavit sworn by the applicant. The respondent, Ally Khalid Komba filed counter affidavit objecting the application deposed by himself.

In brief, the matter arose in this way: The applicant herein sued the respondent before Masanze Primary Court for maliciously injury to property in Criminal Case No. 149 of 2021 which was decided against the respondent. Aggrieved by the said decision, the respondent successfully appealed to the



District Court of Kilosa, at Kilosa. In an attempt to appeal against the decision of the District Court, the applicant found that he was time barred to re-approach this court and therefore, lodged this application seeking for an extension of time.

At the hearing of the application, the applicant enjoyed the legal services of Mr. James Mwakalosi, the learned advocate whereas the respondent appeared in person, and unrepresented. With the consent of this court, the application was disposed of by way of written submissions. Both parties, dutifully, complied with the filing schedule as ordered by the court on 14/12/2022, hence this ruling.

Submitting in support of the application, the applicant argued that, there are illegalities in the decision of the District Court of Kilosa including the holding that there was a land dispute between the parties while there is no such a dispute pending in any court.

According to him, in order for such illegalities to be rectified, this court has to extend time so that the applicant can be able to appeal against that decision and leave the courts records clean. To bolster his submission, he referred this court to the case of **Halfan Sudi Vs. Abieza Chichili (1998) TLR 527** where the Court held:

"a court record is a serious document, it should not be lightly impeached or left with illegalities...there is always a presumption that a court record accurately represents what happened hence it should never be left with illegalities".



The applicant also cited the case of **VIP Engineering and Marketing Ltd & 2 Others Vs. Citibank Tanzania Ltd**, Civil Reference No. 6, 7 and 8 of 2006 (unreported), where the Court of Appeal of Tanzania had the following to say:-

"We have already accepted, it is established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitute "sufficient reason" within the meaning of Rule 8 of the rules for extending time. Equally established is the law to the effect that a decision arrived at in the breach of rules of natural justice is null, because it is tainted with illegalities....".

Based on the above arguments and case laws cited by the learned counsel for the applicant, he prayed and urged this court to consider the prayers exhibited in the chamber summons and grant the same accordingly.

In reply to the applicant's submission, the respondent pointed out that there are well known principles establishing the grounds in which courts have to consider when the applicant is applying for extension of time. He cited the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, CAT sitting at Arusha**, Civil Application No. 2 of 2010 in which the following guidelines were formulated when considering what amount to good cause: -

a) The applicant must account for all the period of delay.

b) The delay should not be inordinate.



c) The applicant must show diligence and not apathy. Negligence or sloppiness in the prosecution of the action that he intends to take.

It was the respondent's submission that, the applicant has failed to establish a sufficient cause to warrant this court extend time because he failed to account for each day of delay as from the date of judgment delivered on 8/04/2022 up to 06/06/2022 when he filed the Application No. 23 of 2022 which was struck out for negligence on part of the applicant.

He supported his proposition with the cases of **Jubilee Insurance Company (T) Limited Vs. Mohamed Sameer Khan**, Civil Application No. 439/01 of 2020 (CAT) sitting at Dar Es Salaam (unreported) and **Paul Martin Vs. Bertha Anderson**, Civil Application No. 7 of 2005 HCT Arusha (unreported).

Concerning the point of illegalities, he submitted that, the same does not constitute sufficient ground for every application for extension of time, and also that even where illegality is pleaded, it must be apparent on the face of record. According to him, the ground of illegality which was raised by the applicant has no merit because the District Court made finding that the records in original criminal case no. 149 of 2021 show that the case originated from land dispute, hence there is no issue of illegality to be determined by this appellate court.

He concluded that, the applicant had no sufficient and reasonable grounds for his prayers to warrant this court grant the orders sought for extension of time. He then prayed that, this application be dismissed with costs.



I have carefully considered the application, the supporting affidavit, the written submissions duly and timely filed before the court, the case digest therein and the applicable law. The point for determination is, whether the applicant has advanced sufficient reasons to warrant this court extend the time sought by the applicant.

I must point out at the outset that, the only reason shown in the affidavit supporting the application for extension of time, which was equally expounded in the written submissions in chief filed in support of the application, was that there was illegality on the decision of the District Court of Kilosa in Criminal Appeal No. 2 of 2022. This reason was disputed by the respondent as clearly depicted in his counter affidavit and written submissions that he filed while responding to the submissions in chief filed by the applicant.

In determining the issue of illegality, I will be guided by the settled position of law established by the Court of Appeal of Tanzania regarding illegality and the parameters of how illegality should be. In the case of **Ibrahim Twahil Kusundwa and Another Vs. Epimaki Makoi and Another**, Civil Appeal No. 437/17 of 2022 (unreported), it was observed that: -

*"...an illegality of the impugned decision will not be used to extend time in this case, for, no room will be available to rectify it in the application for stay of execution intended to be filed. The illegality of the impugned decision is not a panacea for all applications for extension of time. **It is only one in situation where, if the***



extension sought is granted, that illegality will be addressed".

(Emphasis provided)

In situations where there is an allegation of illegality in the impugned decision, the position of the law as it was expounded by the CAT in the case of **Lyamuya Construction Co. Ltd Vs. Board of Registered Trustees of Young Women's Association of Tanzania** (supra) is that, when the court is determining as to whether it may grant the sought extension of time or otherwise, the following factors must be considered; whether the alleged illegality is not just an error in the decision; whether the alleged illegality is apparent on the face of the record; and whether the alleged illegality is of sufficient importance. Thus, the Court held: -

".... 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 drawn argument or process".

Flowing from above, it is crystal clear that the principle established in the aforementioned authorities, is applicable in this matter. It is my considered view that, in the instant application for extension of time, the alleged illegality can only be resolved through long argument contrary to the requirement that illegality should be apparent on the face of record.

In the upshot and for the above reasons, the instant application for extension of time within which to file an appeal out of time is not supported by



good and sufficient reasons. Accordingly, this application is non-meritorious, and it is hereby dismissed with costs. **It is so ordered.**

DATED at **MOROGORO** this 31st day of May, 2023.



M. J. CHABA

JUDGE

31/05/2023

