

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI
PC MISC. CIVIL APPLICATION NO. 4 OF 2023

*(Arising from Simanjiro District Court Civil Appeal No. 3 of 2022 and Nyumba ya Mungu Primary Court
civil Case No. 42 of 2022)*

ANJELINA BAYO.....APPLICANT

VERSUS

JUMA MOHAMEDRESPONDENT

RULING

11th & 28th July, 2023

Kahyoza, J.:

Juma Mohamed sued **Anjelina Bayo** before the primary court. He emerged successful. Aggrieved, **Anjelina Bayo** appealed to the district court and lost. Unfortunately, **Anjelina Bayo** defaulted to appeal on time, so she lodged an application for extension of time to this Court, which is the subject of this ruling. Anjelina alleged that she did not appeal on time as the first appellate court delayed to give her a certified copy of the judgment together with a decree and that the judgment of the trial court was tainted with illegality.

The issue for determination is whether the applicant has adduced sufficient reason for delay. The application was heard *ex-parte* as the respondent did not appear despite being served.

Is a delay to issue a copy of the judgment and decree a sufficient ground for extension of time?

Anjelina Bayo, the applicant, deposed that she applied for a copy of the judgment a day after the district court delivered its judgment. The judgment was delivered on 17/11/2022 and she applied for a copy of the judgment on 18/11/2022, which she obtained on 19/12/2022. She visited her advocate on 23/12/2022 who wrote another letter dated 23/12/2022 for certified copied of the judgment and decree. **Anjelina Bayo's** advocate received certified copies of the judgment and decree on 27.2.2023.

Mr. Festo, the applicant's advocate submitted that time to obtain documents is excluded under section 19(2) of the **Law of Limitation Act**, [Cap. 89 R.E. 2019] (the **LLA**).

It is settled that in an application like the instant one, the applicant has to exhibit a good cause or sufficient reason for delay. See **Mumello v. Bank of Tanzania** [2006] E.A. 227 where it was observed that-

"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."

Indisputably, the applicant did not obtain a certified copy of the judgment of the district court exercising its appellate jurisdiction on time. It

is however, trite law that a person aggrieved by the decision of the primary court is not required to attach a copy of decision appealed against along with a decree or an extract order. Thus, the applicant was not bound to wait for a copy of the judgment to appeal. She bound to appeal within 30 days from the date of the decision of the district court. It may be argued that how would one obtain prepare grounds of appeal without a copy of the judgment. The answer is that the applicant would have filed her appeal based on what she heard and upon being granted a copy she would have sought to amend the grounds of appeal.

It is settled that there is no need to attach copy of the judgment or a decree to the petition of appeal when appealing to the High Court from the decision of the district court exercising appellate jurisdiction. Appeals from the district court exercising appellate jurisdiction are governed by section 25 of the **Magistrates' Courts Act**, [Cap. 11 R.E 2019] (the **MCA**) which does not require a copy of judgement to be attached to the petition of appeal. It states-

"25(1)(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High

Court may extend the time for filing an appeal either before or after such period of thirty days has expired."

This Court in ***Gregory Raphael V Pastory Rwehabula*** [(2005)] TLR 99(HC) cemented the position that the law does not require a copy of the judgment to be attached to the petition of appeal from the decision of the district court when excising appellate jurisdiction. It stated that-

"As it can be seen, attachment of a certified copy of judgment is not one of the contents of the petition of appeal as it used to be in appeals originating from district court and courts of Resident Magistrate as is provided under O. 39, rule 1 of the Civil Procedure Code, 1966, which law is not applicable in Primary courts. Failure to attach in memorandum of appeal along with a copy of decree and judgment renders the appeal incompetent. Attachment of copies of decree and judgment is a condition precedent in instituting appeals originating from district court and court of resident magistrate."

The applicant had therefore, no reason let alone sufficient reason not to file his appeal against the decision of the district court exercising appellate jurisdiction. The applicant had no valid explanation. He delayed due to lack of diligence and ignorance of the law. See ***Tanga Cement and Another*** Civil Application no 6 of 2001 clearly held that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including

*whether or not the application has been brought promptly; **the absence of any or valid explanation for delay; lack of diligence on the part of the applicant.***"

It is settled that ignorance of the law is not a good a reason for extension of time. See the case of **Zebitisi Kawuku V. A. Karim (1938) 5 ECCA 37** where it was held that-

*"**Ignorance of law, old age and lack of means are not good grounds for allowing an appeal out of time**". (emphasis supplied)*

In the end, I find that since the applicant was not required to attach a copy of the judgment or decree to the petition of appeal, time for obtaining a certified copy of the judgment or decree appealed from cannot be excluded. For that reason, I find the first ground in support of an application for extension of time meritless.

Is illegality as a ground for extension of time established?

The applicant deposed that the ruling and copies of the proceedings were tainted with illegality. She averred that the trial court entertained the matter at hand without the jurisdiction. She added that the first appellate court misconceived the matter and forthwith upheld the illegality of the primary court.

It is trite Law that illegality is a sufficient ground for extension of time.

See the decision in **Principal Secretary Ministry of Defence And National Service v. Devram P. Valambhia** [1992] T.L.R. 387. However, to amount to a sufficient ground for extension of time, illegality must; **one**, manifest itself on the face record of the impugned decision. It must not be something established by long argument and submission. See the case **Ngao Godwin Losero vs Julius Mwarabu** (Civil Application No. 10 of 2015) [2016] TZCA 302 (13 October 2016); **two**, be that of sufficient importance. See the case of **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 20 of 2010 (CAT-unreported).

I wish to state as held in **Ngao Godwin Losero vs Julius Mwarabu** (supra) and **Metro Petroleum Tanzania Limited & Others vs United Bank for Africa** (Civil Application No. 205 of 2015) [2016] TZCA 885 (1 September 2016) that there must be a distinction between existence of an illegality in the impugned decision and existence of arguable grounds on appeal be it of law or mixed fact and law for the consideration by the Court on appeal. It is obvious that the alleged illegality in the present case did not meet the criteria. The alleged illegality is not on the face of record to discern the illegality in the present case, one must *deep dive* in the judgment of the district court and the judgment of the trial court to find out if the trial court

transgressed its jurisdiction. Not only that but also, the court considering the alleged illegality must consider the interpretation of the terms of employee and employer by law. This is contrary to the established requirement that the illegality should be on the face of record.

In addition, the alleged illegality is not on the face of record of the impugned decision. The applicant deposed that the trial court entertained the matter without jurisdiction. The applicant's advocate is trying to impress on me that the illegality in the trial court's judgment rendered the appellant's court decision illegal. The advocate's submission and the applicant's averment proved that the illegality is not the impugned decision but is on the trial court's judgment. Thus, it does not meet a second criterion of illegality as a ground for extension of time.

Eventually, I am of the decided view that the applicant did not adduce sufficient reason for extension of time. Consequently, I dismiss the application for extension of time. I make no order as to costs.

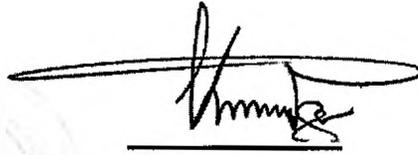
It is ordered accordingly.

Dated at Babati, this **28th** day of **July**, 2023.

A handwritten signature in black ink, appearing to read 'John R. Kahyoza', written over a horizontal line.

**John R. Kahyoza,
Judge**

Court: Ruling delivered in the presence of Mr. Festo, the appellant's advocate and in the absence of the respondent. B/C Ms. Fatima present.



**John R. Kahyoza,
Judge
28.7. 2023**