

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

CIVIL APPEAL NO. 17 OF 2023

(Arising from Civil Application No. 56 of 2022 of the Resident Magistrates' Court of Mwanza)

DR. DEUS MALULU.....APPELLANT

VERSUS

PHARES BULUGU..... RESPONDENT

JUDGMENT

30th June & 21st July, 2023

Kilekamajenga, J.

This case originates from Civil Case No. 01 of 2010 of the Resident Magistrate Court at Mwanza where the respondent secured a decree against the appellant. It is alleged that, the respondent, after retiring from public service, secured a job as a medical doctor at Bukumbi Hospital. At that time, the appellant was the Medical Doctor in charge of the Hospital. At some point, the respondent's employment was terminated due to inability to perform the intended duties and obligations due to old age and other medical conditions. The respondent was aggrieved with the letter of termination which was signed by the appellant hence filed a case for defamation in the Resident Magistrates' Court of Mwanza. It is further alleged that, the case against the appellant was heard in the absence of the appellant. Thereafter, everything remained silent until the respondent attempted an execution against the appellant's properties. Time to challenge the exparte



judgment had lapsed prompting the appellant to file an application for extension of time to set aside the exparte judgment. The application was made vide Misc. Civil Application No. 56 of 2022. In that application, the appellant alleged existence of illegality on the face of the record. On 23rd May 2023, the Resident Magistrates' Court of Mwanza dismissed the application for lack of merit as the appellant failed to account for each day of delay. Before this court, the appellant advanced one ground to impugn the decision to dismiss his application for extension of time. The ground is coached thus:

- 1. That the trial court erred both in law and facts to disregard the illegality on the face of record of the impugned judgment in Civil Case No. 01 of 2010, and did not consider the Higher Courts decisions tendered to prove the said illegality.*

During the hearing of the appeal, the learned advocate Mr. Ilanga accompanied the appellant in defending the appeal. The counsel expounded the illegality that, in the plaint, especially at paragraph 8, the respondent prayed for Tshs. 50,000,000/= as general damages, interest and costs. However, in this case, the respondent did not plead for specific damages rendering the plaint incompetent because general damages do not determine the jurisdiction of the court. The counsel cemented the argument with the case of **Mwananchi Communication Ltd and two others v. Joshua Kajula and two others**, Civil Appeal No. 126/01 of 2016. The counsel further argued that, an allegation of illegality is a sufficient

ground for extension of time as it was stated in the cases of **Finca (T) Ltd and another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018; **James Anthony Ifada v. Hamis Alawi**, Civil Application No. 482/14 of 2019. Also, this court took a similar stance in the case of **Jonas Ntaliligwa v. Fedia Nyayagara**, Misc. Land Application No. 20 of 2021. In his view, the appellant advanced sufficient reasons to warrant extension of time.

The respondent on the other hand objected the appeal and urged the court to dismiss it with costs on the reason that the execution of this case commenced in 2011 when the appellant was still in Mwanza. He blamed the appellant who employed delaying tactics by filing perennial applications. When rejoining, the counsel for the applicant reiterated the prayer to allow the application.

In determining whether this appeal has merit, the issue is whether the appellant had sufficient reason to warrant the court to grant extension of time to set aside the exparte judgment. It is a settled principle of law, for a court to grant extension of time there must be sufficient reasons. This is the stance taken in the cases of **Shelina Jahangir & 4 Others v. Nyakutonya N.P.F Company Limited**, Civil Application No. 47/08 of 2020; **Lyamuya construction Company limited v. Board of Registered Trustee of Young women's Christian Association of**

Tanzania, Civil Application No. 02 of 2010 CAT and **Benedict Mumelo v. Bank of Tanzania** [2006] 1 EA 227.

Furthermore, in the case of **Lyamuya Construction Company Limited** (*supra*), when quoting the case of **John Lazaro vs Republic**, Criminal Appeal No. 34/4 of 2017, the Court of Appeal of Tanzania stated sufficient cause for extension of time thus:

*"(a)the applicant must account for all days 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;
(d)if the court feels that there are other reasons, such as the existence of point of law of sufficient importance such as the illegality of the decision sought to be challenged."*

What amounts to sufficient cause may not be exhaustive. Hence, each case has to be considered on its own circumstance. In our instant case, the appellant raised an issue of illegality calling the trial court to extend time. As stated above, illegality is one of the factors to grant extension of time even where the applicant has not accounted for each day of delay. In the case of **VIP Engineering and Marketing Limited v. Citibank (T) LTD**, Consolidated Civil Reference No. 6, 7

and 8 of 2006 (unreported), the Court of Appeal emphasized that an alleged illegality may be a good reason for extension of time. The Court stated that:

"It is therefore, settled law that a claim of illegality of the challenged decision constitutes reason for extension of time under Rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."

In the case at hand, so long as the appellant alleged illegality, the court was obliged to grant extension of time for the illegality to be corrected. See the cases of **Iron and Steel Limited v. Martin Kumaliya and 117 Others**, Civil Application No. 292/18 of 2020 and **Sabena Technics Dar Limited v. Michael J. Luwanzu**, Civil Application No. 40 of 2021.

In this case, the appellant preferred an appeal against the decision of the Resident Magistrates' Court which dismissed his application for extension of time to set aside an exparte judgment. In his application for extension of time, the appellant alleged illegality as a good cause for extension of time. According to the position of the law stated above, the allegation for illegality ought to warrant the court to grant extension of time irrespective of the fact that the appellant has delayed for several years. As long as there is an illegality on the record, the extension of time will allow the court to rectify the error. Based on that reason, I hereby allow the appeal. The appellant is granted extension of time to file the application to set aside the

exparte judgment of the Resident Magistrates' Court. The appellant is granted 30 days to file the intended application. No order as to costs. Order accordingly.

DATED at **Mwanza** this 21st day of July, 2023



Ntemi N. Kilekamajenga.
JUDGE
21/07/2023



Court:

Judgment delivered this 21st July 2023 in the presence of the appellant and respondent all present in person. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
21/07/2023



