

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ARUSHA DISTRICT REGISTRY  
AT ARUSHA**

**PC. CIVIL APPEAL NO. 9 OF 2023**

*(C/F Misc. Civil Application No. 6 of 2022, District Court of Arumeru at Arumeru, Original Civil Case No. 36 of 2021 Primary Court of Emaoi)*

**JOHN NEVAVA ..... APPELLANT**

**VERSUS**

**RAPHAEL FRANCIS KIVUYO ..... RESPONDENT**

**JUDGMENT**

31<sup>st</sup> July & 1<sup>st</sup> September, 2023

**TIGANGA, J.**

The appellant is appealing against the Ruling and Order of Arumeru District Court in Misc. Civil Application No. 6 of 2022 where he unsuccessfully applied for extension of time to appeal out of time against the decision of Emaoi Primary Court (the trial court) in Civil Case No. 36 of 2021.

Brief history shows that, the respondent herein filed a civil suit against the appellant claiming a total of Tshs. 10,890,000/= which he lent him in installments for various reasons. However, after taking evidence from both sides, the trial court was satisfied that, the respondent had managed, at the balance of probabilities, to prove only Tshs. 8,610,000/=. The appellant was

aggrieved by such decision which was delivered on 03<sup>rd</sup> September 2021. He intended to appeal. However, he failed to do so on time on the ground that, he was availed with the copies of Judgment and Proceedings late.

In the urge to pursue his right of appeal out of time, he filed Misc. Civil Application No. 6 of 2022 before the District Court of Arumeru, praying for extension of time on main two grounds that; he was late to be availed with necessary copies needed for the appeal and that, there was an illegality which needs to be addressed on the impugned trial court's judgment. The District Court dismissed his application for want of merit hence the current appeal with the following three grounds;

1. That, the District Court grossly erred in law and fact in dismissing the application for extension of time to appeal for the reason that, the appellant did not demonstrate good cause and sufficient reason for his delay.
2. That, the District Court erred in law and fact in failing to grant the appellant extension of time after he had shown illegality in the decision of a Primary Court.
3. That, the District Court erred in law and fact in failing to consider the fact that the appellant could have not composed valid grounds of appeal in absence of being supplied with proceedings and judgment of the Primary Court.

During hearing, the appellant was represented by Mr. Jafari Suleiman whereas the respondent was represented by Mr. Serian Nelson, both learned Advocates.

Supporting the appeal, Mr. Suleiman abandoned the 1<sup>st</sup> ground and submitted on the 2<sup>nd</sup> ground that, the District Court failed to consider the ground of illegality as one of the reason to grant extension of time. He averred that, the illegality to be considered was the fact that, the trial court did not consider the tendered documents and did not say why it disregarded them. He referred the Court to the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram P. Valambia** [1992] TLR 182 where illegality was considered as a good cause for extension of time.

On the 3<sup>rd</sup> ground of appeal the learned counsel submitted that, the District Court failed to consider the fact that, the appellant failed to get the copies of Judgment and Proceedings timely. That, without such copies, the appellant would not have made a plausible ground of appeal. He prayed that, this Court allow the appeal, grant the appellant extension of time so that he can challenge the trial court's decision.

Opposing the appeal, Mr. Nelson submitted on the 2<sup>nd</sup> ground of appeal that, matters argued by the appellant as illegalities are matters of facts and not points of law. To cement his argument he cited the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 where the Court of Appeal emphasized that, an illegality should be on law and apparent on the face of record and not discovered after a long process or arguments.

On the 3<sup>rd</sup> ground of appeal, the learned counsel submitted that, before at the District Court the appellant had only two issues to be determined, whether he had accounted for the delay and whether there was illegality on the trial court's decision. Therefore, the assertion that the District Court did not consider the fact that, the trial court failed to give him necessary documents was neither pleaded nor argued before the District Court. He prayed that appeal be dismissed with cost.

Rejoining briefly, Mr. Jafari submitted that, the trial magistrate's failure to accept a document as evidence is a legal issue which does not require long process to discover. He insisted that, this appeal be allowed with cost.

I have gone through the parties' submissions as well as District Court's records. My task is to determine the grounds of appeal raised and argued whether the District Court was justified in denying the appellant's application for extension of time to appeal out of time.

Starting with the 2<sup>nd</sup> ground, the appellant challenges the District court for ignoring the fact that, there was illegality on the trial court's record which justifies a reasonable ground to grant extension of time. The issue of extension of time is not a virgin ground in our jurisdiction as the law is not settled on the factors to consider in granting or refusing extension of time. Among the factors to take into account are, the period of delay, whether the delay is ordinate or inordinate, and whether the days delayed have been accounted for and last is the illegality in the decision sought to be challenged. In a substantive number of Court of Appeal decisions the illegality of the decision to be challenged has been pronounced to be a good cause for the extension of time to be granted. See, **CRDB Bank Limited vs. George Kilindu and Another**, Civil Application No. 87 of 2009, CAT (unreported), **Secretary, Ministry of Defence and National Service vs. Devram Valambhia** (supra) and **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha (unreported). In the latter case,

the Court of Appeal held that, illegality must be apparent on the face of the record such as the question of jurisdiction and not one that would be discovered by a long drawn legal argument or process.

In the appeal at hand, the District Court held in its impugned ruling that, there was no illegality on the impugned decisions, because matters argued by the appellants are matters of facts and not law, and they require making inquiry to the evidence to discover. In his submission, the appellant's counsel argued that, the trial court denied and failed to give weight to the documentary evidence given. He however did not expound further, thus, as rightly argued by the respondent this is not an issue apparent on face of record. One has to go through the trial court's proceedings to ascertain on the said documentary evidence, what was it and its content, then go through the judgment to see whether or not the trial court analysed the said evidence. This is contrary to what the law entails on what illegality should be. In the circumstances, the District Court was justified to hold that there was no concrete issue on illegality to be determined as a ground for extending time. This ground also fail, it is therefore dismissed.

On the third ground, the appellant claim that, the District Court did not give regard to the fact that, he was denied copies of judgment and

proceedings by the trial court hence, could not compose a thorough grounds of appeal. I however find this ground meritless on two reasons; **One**, the law does not require copies of judgment and proceedings to be attached to the Petition of Appeal when one is appealing from the Primary court to the District Court. More so, the appeal could even be made orally. Section 20 (3) and 4 (b) of the **Magistrates Court's Act**, Cap 11 R.E. 2019 provides that;

*(3) Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought.*

*(4) Notwithstanding the provisions of subsection (3)-*

*(a) n/a; and*

*(b) if an application is made to the district court within the said period of thirty days or any extension thereof granted by the district court, the district court may permit an appellant to state the grounds for his appeal orally and shall record them and hear the appeal accordingly.*

In the case of **Gregory Raphael vs. Pastory Rwebura** [2005] TLR 99, it was held *inter-alia* that;

*"...Attachment of copies of decrees and judgment is a condition precedent in instituting appeals originating from District Courts and Courts of Resident Magistrates, but for appeals in matters originating from Primary Courts there is no such requirement and*

*the filing process is complete when the petition of appeal is filed upon payment of the requisite court fees;"*

In that regard, the appellant need not to wait for the copies of the judgment and proceedings for him to file his appeal.

**Two**, according to his affidavit for extension of time filed at the District Court, the appellant deposed that he was availed with the said copies of Judgment on 22<sup>nd</sup> December, 2021. However, he filed the application for extension of time on 25<sup>th</sup> April, 2022 and in his affidavit, he did not depone on what transpired between December 2021 when he was availed with the copies to April, 2022 when he preferred application for extension of time. The law is certain that, delay even of a single day needs to be accounted for. In the case of **Marco M.S Katabi vs. Habibi African Bank (T) LTD**, Civil Application No. 570/17 of 2020, Court of Appeal at Dsm referred to its earlier decision in the case of **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 regarding the requirement of accounting every day of delay 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".*

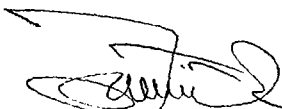


In that regard, the District Court was justified to hold that the appellant failed to account for his delay. This ground also fails. In the upshot, this appeal lacks merit, and is thus dismissed with cost. The decision of District Court is hereby upheld.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 1<sup>st</sup> day of September, 2023



  
**J.C. TIGANGA**  
**JUDGE**