

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

MISC. CIVIL APPLICATION NO. 70 OF 2023

(Arising from Civil Revision case No. 3 of 2018 of the High Court of Mwanza)

CLEMENT KYARO..... 1ST APPLICANT

ISMAIL ABDILLAH MABULA 2nd APPLICANT

(The administrator of the estate of the late Tabu Ayoro)

THOMAS TAREGWA 3RD APPLICANT

VERSUS

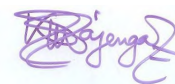
CYPRIAN VICTOR NYANGWE.....RESPONDENT

RULING

20th September & 20th September, 2023

Kilekamajenga, J.

The applicants have preferred the instant application seeking extension of time to file notice of appeal to the Court of Appeal of Tanzania. The decision sought to be challenged was delivered on 13th July 2018. The brief facts leading to this application are as follows: the respondent sued the applicants in Musoma Urban Primary Court through Civil case No. 17 of 2003. The respondent won the case and the applicants appealed to the District Court of Musoma vide Civil Appeal No. 49 of 2003 where the applicants won the case. The respondent approached this court for justice through PC. Civil Appeal No. 64 of 2004, where the decision of District Court was set aside and the decision of the Primary Court restored. The matter went back for execution prompting perennial cases leading to Civil Revision No. 3 of 218 which was filed before this court which was dismissed for want of



merit. Thereafter, the applicant approached the Court of Appeal, however, without a certificate on point of law. The applicants had no any other option rather than withdrawing the appeal. They filed an application for extension of time to file notice before this court but were later advised to withdraw the same. Now, the applicants have filed the instant application in an attempt to approach the Honourable Court of Appeal for the second time. On the date fixed for hearing only the 1st applicant appeared. Despite the absence of the other applicants, the 1st applicant was willing to defend the application. He briefly narrated the main cause of the delay and prayed for the application be allowed. Also, in the affidavit accompanying the application, the applicants raised an issue of illegality as the reason to warrant extension of time. Mr. Erick Muta, being the counsel for the respondent prayed for the adoption of the counter affidavit and referred the court to the case of **Dianarose Spare Parts Limited V. Commissioner General Tanzania Revenue Authority**, Civil application No. 245/20 of 2021. Thereafter, there was no meaningful rejoinder from the 1st applicant.

The instant application is one of the cases that calls the court's power to exercise its discretion. The grant for extension of time must be backed with a sufficient reason for the delay. See the cases of **Nyabazere Gora v. Charles Buya**, Civil Appeal No. 164 of 2016; **CRDB Bank PLC v. Victoria General Supply Co. Ltd**, Civil Application No. 319/08 of 2019; and **Alasai Josiah (suing by his Attorney**



Oscar Sawuka) v. Lotus Valley Ltd, Civil Application No. 498/12 of 2019. There are several reasons amounting to sufficient cause for the delay However, where an applicant alleges illegality, according to the current position of the law, unless there are reasons to decide otherwise, the applicants must be granted extension of time in order to correct the alleged illegality. See the cases of **Motor Vessel Sepideh and Pemba Island Tours and Safaris v. Yusuf Moh'd and Ahmad Abdullah**, Civil Application No. 91 of 2013; **Equbal Ebrahim v. Alexander K. Wahyungi**, Civil Application No. 235/17 of 2020; **John Paulo Yusuphu v. Republic**, Criminal Appeal No. 582 of 2017 and **Arunaben Chagan Mistry v. Naushad Mohamed Hussein and 3 Others**, Civil Application No. 6 of 2016.

In the case at hand, the applicants alleged illegality in the decision being challenged, for the record of the court to be corrected, I find reason to grant extension of time. I hereby allow the application and order the applicants to file the notice of appeal as soon as practicable. The costs shall follow in the course. Order accordingly.

DATED at **Mwanza** this 20th day of September, 2023.



Ntemi N. Kilekamajenga.
JUDGE
20/09/2023





Court:

Ruling delivered this 20th September, 2023 in the presence of the 1st applicant but in the absence of the 2nd and 3rd applicant; and in the presence of the respondent's counsel Mr. Erick Muta (Adv).

Ntemi N. Kilekamajenga.
JUDGE
20/09/2023

