

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

**CIVIL APPEAL NO. 13 OF 2023**

*(Arising from Misc. Civil Application No. 8 of 2023 In the District Court of Hanang' at  
Katesh)*

**SPORA PETRO.....APPELLANT  
VERSUS  
NATALIA NINGA.....RESPONDENT**

**JUDGMENT**

*31<sup>st</sup> October & 13<sup>th</sup> November, 2023*

***Kahyoza, J.***

**Natalia Ninga**, the respondent, successfully sued **Spora Petro**, the appellant, before Katesh Primary Court (the trial court) for adultery, seeking damages amounting to Tzs. 4,000,000/=. The primary court ruled in favor of the respondent. However, Spora Petro, dissatisfied with the decision, appealed to the District Court of Hanang' (the District Court). The district court dismissed the appeal due to the non-appearance of both the appellant and the respondent.

Following the dismissal of the appeal by the district court, **Natalia Ninga** returned to the primary court to initiate the execution of the decision against Spora Petro, which the latter had previously appealed.

Later, Spora Petro applied to the district court to extend the time for her to apply to set aside the dismissal order. The district court dismissed the application for lack of merit. Subsequently, Spora Petro filed this appeal, citing three grounds of complaint, namely-

- 1. That, the Honourable Principal Resident Magistrate in charge erred both in law and fact by failing to properly evaluate and assess reasons of extension of time presented by the applicant as deponed in affidavit.*
- 2. That, the Honourable Principal Resident Magistrate in charge erred in both law and facts by failing to consider and evaluate the submissions presented by parties during trial.*
- 3. That, the whole decision in Miscellaneous Civil Application No. 8 of 2023 embraces illegalities boiling in civil case No. 61 of 2021 before Hanang' Primary Court at Katesh.*

At the hearing of this appeal, Mr. Eric Erasmus Mbeya, Advocate, appeared for the appellant and the respondent was unrepresented. They argued orally.

**Was there a technical delay?**

In presenting the first ground of appeal, Mr. Mbeya, Adv, asserted that during the pendency of the appeal at the District Court, the parties involved approached the District Commissioner (DC) in an attempt to amicably settle their dispute. As part of their agreement, the appellant committed to compensating the respondent with a sum of 1,000,000/=. However, the appellant refrained from entering appearances to prosecute her appeal, leading to its dismissal. Subsequently, the respondent initiated the execution of the trial court's decision. In response, the appellant applied for an extension of time to submit an application to set aside the dismissal order and reinstate her dismissed appeal.

The District Court, however, rejected her application. Mr. Mbeya argued that the delay was of a technical nature, invoking the precedent set in **Bharya Engineering & Construction Co. Ltd v. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017.

The respondent asserted that she did not engage in any proceedings before the District Commissioner (DC) and no matter was resolved in that context. Additionally, she clarified that she entered into a Christian marriage, which is still valid according to the trial court's determination. She revealed that her husband had deserted her, converted to Islam, and is now

cohabiting with the appellant. The husband neglects both her and their children, and she argued that the appellant is obligated to compensate her. She said nothing on the issue that the delay was technical delay.

In his rejoinder, the appellant's advocate submitted that the respondent had already been paid Tzs.1,000,000/= as compensation.

It is settled that delay due to prosecuting an incompetent appeal or matter is a technical delay, it is different from real or actual delays. The Court of Appeal has held in cases without number that a technical delay **is explicable and excusable**. There is a plethora of authorities such as **Fortunatus Masha v. William Shija and Another** [1997] TLR 154, **Salvand K. A. Rwegasira v. China Henan International Group. Co. Ltd** Civil Reference No. 18 of 2006, **Zahara Kitindi & Another v, Luma Swalehe & 9 Others**, Civil Application No. 4/05 of 2017, **Yara Tanzania Limited v. DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016 and **Vodacom Foundation (supra) and Samwel Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17 of 2017. In **William Shija and another v. Fortunatus Masha** (supra) the Court of Appeal stated the following -

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."*

The central question is whether the time spent by the parties seeking a resolution before the District Commissioner amounted to a technical delay. The response is negative. Technical delay is defined as a delay that occurs when parties are pursuing another matter before a different court. It is crucial to note that the office of the District Commissioner does not qualify as a court. Furthermore, there was no ongoing matter being conducted before the District Commissioner's office. Consequently, I find no evidence of technical delay in the present case.

### **Is there any illegality to warrant the extension of time?**

Regarding the second and third grounds of appeal, which were jointly argued, Mr. Mbeya, in his explanation, asserted that the judgment of the trial court, currently under execution, is tainted with illegalities, necessitating an extension of time. Specifically addressing the second ground of appeal,



he strongly contended that the judgment slated for execution was inherently illegal. The trial court had no jurisdiction to entertain a claim for compensation for adultery as **Natalia** had contracted a Christian marriage, as per section 75 of **the Marriage Act**, [Cap 29 R.E 2019] and the case of **Wilson Andrew vs. Stanley John Lugwisa & Another**, Civil Appeal No. 226/2017. That the law is clear, when the decision is illegal, an application for extension of time may be granted, citing the rule in **The AG vrs. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016.

The records clearly indicate that the appellant's affidavit asserts only one ground: that she did not enter an appearance to prosecute her appeal due to a settlement reached between her and the respondent. The issue of illegality was not raised by the appellant before the district court. Furthermore, it is essential to note that, for illegality to be a valid ground for an extension of time, it must be apparent on the face of the record of the challenged decision.

I am in agreement with the appellant's advocate that, where **there is illegality in the impugned decision**, time must be extended regardless of the length of delay to rectify the illegality. This is a settled position. However, to amount to a sufficient reason to support an application of time,

the alleged illegality must be; **one**, clearly apparent on the face of the impugned decision; and **two**, that of sufficient importance. Thus, the alleged illegality must be something, which can be proved from the face of record of the impugned decision. This stance was alluded in **Ngolo Godwin Losero v Julius Mwarabu** Civil Application No. 10/2015 CAT at Arusha (unreported), where the Court of Appeal reiterated its decision in **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application 2/2010 that-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Valambia 's case, the court meant to draw a general principle that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance and I, would add that it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.** The Court in the case Certainly, it will take a long-drawn process to decipher from the impugned decision the alleged misdirection or non-directions on the points of law."* (emphasis is added)

The purported illegality in this case is not evident on the face of the record of the challenged decision of the district court. The decision in question is the district court's order dismissing the appeal due to the lack of appearance. The appellant is requesting an extension of time to apply to the district court to set aside its dismissal order, not to appeal against the decision of the primary court. It is important to note that the appellant initially appealed against the decision of the primary court but later abandoned it. Thus, the alleged illegality can be discovered after long-drawn submission or process and it is not on the face of record of the impugned decision.

As an advice, I wish to emphasize that abandoning an ongoing court process in favor of amicable settlement, without the court's approval, constitutes an abuse of the judicial process. This court cannot turn a blind eye or condone such a mockery of justice. Consequently, the second and third grounds of appeal are summarily dismissed for lack of merit.

Finally, I find the appeal meritless, and dismiss it with costs. I confirm the decision of the district court.

It is ordered.

Dated at **Babati** this **13<sup>th</sup>** day of November, 2023.





**J. R. Kahyoza**

**Judge**

**Court:** Judgment delivered in the presence of the parties. B/C, Ms. Fatina Haymale (RMA) present.



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

**J. R. Kahyoza**

**Judge**

**13/11/2023**