

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA DISTRICT REGISTRY**

MISC CIVIL APPLICATION NO. 12 OF 2023

*(Arising from PC Civil Appeal No. 20 of 2020 of Urambo District Court
and Original Civil Case No. 86 of Urambo Urban Primary Court)*

JOSHUA SAMWEL..... APPLICANT

VERSUS

YAHAYA KIDAGWE RESPONDENT

RULING

Date: 01/08/2023 & 01/09/2023

BAHATI SALEMA, J.:

The applicant **Joshua Samwel** instituted this application seeking the following orders: -

- 1. This honorable Court be pleased to extend time within which the applicant may appeal against the decision of Urambo District Court in Civil Appeal No. 24 of 2018*
- 2. Costs of and incidental to this application be provided for*
- 3. Any relief (s) this Court may deem fit to grant*

The application is brought under the provisions of Section 25(1) (b) of **the Magistrates Court Act**, Cap. 11 [R.E 2019] supported by an affidavit duly sworn by Mr. Revocatus Mugaya Kaitila Mtaki advocate for the applicant.

The grounds advanced by the applicants are that the applicant managed to appeal to this Court on time but his appeal was struck out on 13/12/2022 for being incompetent.

Further, at paragraph 7 of the affidavit, the deponent has set out a ground of illegalities upon which the intended appeal will be grounded;

1. *Whether it was proper for the learned Resident Magistrate to determine the appeal originating from a suit that was time-barred.*
2. *Whether it was proper for the learned resident Magistrate to deliver the judgment without assigning reasons for taking over the appeal from his predecessor Magistrate (Anna Chilongola)*

It is on the above grounds that the applicant humbly prays this court to grant her an extension of time to file an appeal.

During the hearing Mr. Akram Magoti learned counsel appeared for the applicant while Mr. Saikon Justine represented the respondent.

Submitting in support of the application, Mr. Magoti prayed that the Court adopt the affidavit filed in support of the application. He added that the reason for delay is in paragraph 5 of the affidavit that the applicant managed to appeal within time but the appeal was struck out on 13th December, 2022 for a technical reason but also the judgment and decree thereof was not supplied to him until 21st December 2022.

As to the ground of illegality, the applicant referred this Court to the decision of the Court in ***WETCU LTD vs Kassim Omary Kibwana*** (Labour Application 1 of 2021) [2022] TZHC 12553 (26 August 2022) and stated further that the delay was technical since he filed the appeal within the time and was struck out for technical reasons.

In reply, the respondent objected to the application because the applicant failed to account for each day of delay. The decision that struck out his first appeal was delivered on 13/12/2022. He referred the Court to the case of ***Jubilee Insurance Co. Ltd vs. Mohamed Sameer Khan***, Civil Application No. 439/2020 where it was decided that the applicant has to account for each day of delay.

Regarding the grounds of illegalities, the respondent submitted that the reasons for illegality raised by the applicant are not apparent in the face of the record rather it is a matter of evidence.

In a rejoinder the applicant insisted that the delay was on technical grounds, the first appeal was within time.

In ***Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil App No. 2 of 2010 CAT at Dar es Salaam the court reiterated the following guidelines for the grant of extension of time: -

- (a) *The applicant must account for all the period 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 other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged*

Having painstakingly gone through the record and the submissions made by the parties, it came to my knowledge that the High Court's Judgment that dismissed the applicant's appeal for being incompetent was delivered on 13/12/2022 and this instant application was filed to this Court on 03/01/2023 twenty-one days after the judgment was delivered.

In his submission the applicant did not even discourse about the twenty-one days of delay from the date the judgment of this Court was delivered to the date he filed this application, it is visible that the applicant has failed to account for those 21 days of delay as required by the law.

Regarding the allegations of illegalities raised by the applicant, I definitely join hands with the respondent that the same is imaginative and mere speculations since there is no copy of proceedings from the two lower courts attached to this application so that the court may point out whether the said illegalities exist in the face of the record. Illegality has to be precisely stated not just a mere mention of it, it should be open on the face of the record.


Having said that, I hereby conclude that the applicant has not demonstrated any good cause that would entitle him extension of time. As a result, this application fails and is accordingly dismissed. No order as to costs.

Order accordingly.



A. BAHATI SALEMA
JUDGE
01/09/2023

Court: Ruling delivered in presence of Mr. Akram Magoti, learned counsel for the applicant and in absence of respondent.



BAHATI SALEMA
JUDGE
01/09/2023

Right of Appeal fully explained.



BAHATI SALEMA
JUDGE
01/09/2023

