

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

MISC CIVIL APPLICATION NO. 07 OF 2023

*(C/f from Arumeru District Court Civil Appeal No 21 of 2022, Originating from
Enaboishu Primary Court in Civil Case. 05 of 2022)*

ERNEST SALEHE APPLICANT

VERSUS

PAULO SILIYO RESPONDENT

RULING

10th October & 12th December 2023

KAMUZORA, J.

Under certificate of urgency and by way of chamber summons, the applicant Ernest Salehe applied to this court for extension time within which to file an appeal to this court against the judgement and decree of the district court in Civil Appeal No. 21 of 2022 which was delivered on 07th October, 2023. The application was preferred under section 25(1)(b) of the Magistrate's courts Act Cap 11 R.E 2019 supported by the affidavit sworn by the applicant himself. The Application was contested by the respondent through counter affidavit deposed by the Respondent.

Before the primary court of Enaboishu, the applicant herein was ordered by to pay the sum of TZS 1,296,000 to the Respondent in Civil Case No. 05 of 2022. He was aggrieved and appealed to the district court vide Civil Appeal No 21 of 2022 but the appeal was dismissed and the trial court decision upheld. The applicant intends to challenge the decision of the district court before this court but he is precluded by time limitation hence, he preferred the presence application for extension of time to appeal against the decision of the district court.

Mr. Arnold Tarimo, learned advocate was engaged by the applicant for drafting only and the Respondent appeared in person. While the applicant opted to file written submission, the respondent could not procure draft service hence prayed to make reply by oral submission. The applicant also made oral rejoinder submission.

Submitting in support of application, the Applicant argued that the grant of extension of time is discretionary. That, as per the decision in the case of **Mbogo Vs. Shah (1968) EA**, 4 conditions must be established and demonstrated for extension of time to be granted that is; the length of the delay, the reason for the delay, whether there is an arguable case on appeal and the degree of prejudice to the defendant if time is extended.

Pointing at paragraphs 2 to 9 of the affidavit, the Applicant submitted that the length for delay is 131 days. He argued that, the appeal was lodged timely but the control number was issued two days after the lapse of the time to lodge the application which was on 06/11/2022. He also submitted referring paragraph 10 of the affidavit that is sickness as the applicant was suffering from hypertension from October, 2022 and has been undergoing various medication thus, reasonable ground for extension of time. He referred to the case of **Paulo Safaro Vs. Daffi Tatok Darido**, Land Appeal No. 133 of 2022, **Emanuel R. Maria Vs. District Executive Director Bunda District Council**, Civil Application No 66 of 2010 to insist that health problem can be considered in granting extension of time.

Referring paragraphs 3 and 12 of the affidavit, the applicant further submitted that there is arguable appeal as the 1st appellate court failed to see that there was irregularities in the trial court proceedings. That, the first appellate court was supposed to nullify the proceedings of the trial court as the witnesses were not sworn before testifying in court.

The Applicant was of the view that the respondent will not be prejudiced in any way if the application is granted. That, this court be guided by Article 13(6)(a) of the Constitution of the United Republic of

Tanzania of 1977 as amended from time to time and consider that right to appeal is a constitutional right and grant the application.

In reply, the respondent submitted that the applicant has been preferring several applications to deny him right to enjoy the fruits of the award. He argued that the applicant did not become sick after the decision as he was sick for a long time before and his sickness is the reason, he borrowed bricks from the respondent. He insisted that this application should not be granted.

In his rejoinder, the applicant insisted that since the respondent also admitted that the applicant was sick, the present application be granted.

I have given careful consideration to the chamber application, counter affidavit, reply to the counter affidavit and the arguments for and against this application advanced by parties. The main issue for consideration is whether sufficient reason has been advanced to warrant the extension of time sought by the applicant. Being guided by the principle in the case of **Mbogo Vs. Shah [1968] EA 93 (Supra)** this court assessed if the applicant was able to demonstrate sufficient cause and account for delay. The decision in the above case was also adopted by the Court of Appeal of Tanzania **Lyamuya Construction Company Limited V Board of Registered Trustees of Young women's**

Christian Association of Tanzania, Civil Application No. 2 of 2010

(Unreported) where it was held that: -

"On the authorities however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged"*

In the case at hand the applicant deponed three reasons for the extension of time; delay in being issued with control number for payment, sickness and illegality of the impugned decision.

On the first reason of the delay in obtaining control number, I understand that online filing is governed by law. **Rule 21(1) Judicature and Application of Laws (Electronic Filing) Rules, G.N. 148 of 2018**, reads;

"Document is said to have been filed if it is submitted through electronic filing system before midnight, East Africa time on the date it is submitted, unless specific time is set by the court or it is rejected."

In this matter, the Applicant pointed out that the appeal was lodged timely on 4/11/2022 but there was delay in obtaining the control number which was issued on 08/11/2022 two days after time for appeal lapsed. That, on 05 and 6/11/2022, it was on Saturday and Sunday. The allegedly petition of appeal annexed to this application shows that it was signed by the appellant on 04/11/2022 but it does not show the date it was filed in court. No printout of the electronic filing was attached to support the fact that the same was filed electronically and only the court registry delayed in issuing the control number for payment. Thus, the applicant's claim that there was electronic filing in which registration was delayed because of delay in issuing control number is not backed with evidence.

Again, the record shows the applicant was issued with copies of judgment of the trial court on 04/11/2022 but no evidence if an appeal was filed in this court. This application was brought on 14/02/2023 as per electronic exchequer receipt No. F11851361676274616, which is more than three months after the applicant was issued with copies. There are no reasons advanced by the applicant as to what prevented him from filing appeal after he obtained the said copies.

On the second reason, I do not agree with the applicant claim that sickness prevented him from pursuing his right. The applicant pleaded in his affidavit that he has been sick from October 2022 suffering from hypertension. The medical report attached to the affidavit dated 06th February 2023 shows that the applicant was attended as outpatient in October, 2022 and scheduled for clinics monthly. It is unfortunate that the report did not state time to which the said clinic was to end and whether the applicant was bed ridden and could not do anything. It is important to note that the in Civil Appeal No. 21 of 2022 whose copy is attached to the affidavit evidenced that the applicant was represented. It is unfortunate that the applicant did not explain how sickness prevented him from filing the appeal on time while he had an advocate to represent him. I therefore find no merit in this ground.


On the last ground of illegality, it is a settled principle that illegality if demonstrated, is a sufficient ground to grant extension of time. See, **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambia [1999] TLR182**. It was also made clear in a number of cases that illegality must be on point of law and of sufficient importance and apparent on the face of record.

The Applicants' claim for illegality is based on the fact that the witness testified before the trial court were not sworn. It is unfortunate that the applicant has not attached the alleged proceeding for the court to verify the said illegality hence, this argument is also unsupported. The third ground also fails

In concluding, the applicant was unable to account for delay and in fact was unable to demonstrate good reason for grant of extension of time. I therefore find this application is devoid of merit and proceed to dismiss the same with costs.

DATED at **ARUSHA** this 12th day of December, 2023




D.C. KAMUZORA
JUDGE