

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

MISC. CIVIL APPLICATION NO. 02 OF 2023

(Arising from Misc. Civil Application No. 07 of 2020 in the Juvenile Court of Tabora)

MOHAMED SAID MSANGI APPLICANT

VERSUS

JOHARI PETER MASONGA RESPONDENT

Date of Last Order: 30/04/2024

Date of Delivery: 28/05/2024

RULING

KADILU, J.

Under the legal representation of the learned Advocate Mr. Kelvin Kayaga, the applicant has tried to move this court under Section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019], Sections 79 (1) and 95 of the Civil Procedure Code [Cap. 33 R.E. 2019]. Mr. Kelvin Kayaga filed an affidavit in support of the application. He is praying for an extension of time to apply for revision of proceedings of the Juvenile Court of Tabora in Misc. Civil Application No. 07 of 2020 on the ground that it was tainted with irregularities and procedural impropriety.

Mr. Charles Ayo, Advocate for the respondent opposed the application and filed a counter affidavit in which he generally discredited all the grounds of the application as stated in the affidavit sworn by Mr. Kelvin. He prayed for the court to dismissed the application for the reasons that it has been filed maliciously to hinder the rights of the respondent. When the application came up for a hearing, each Counsel prayed for his affidavit to be adopted by the court in lieu of oral submissions. An examination of paragraphs 4, 5,

6, 7, 8 and 9 of Mr. Kelvin's affidavit reveals that the Juvenile Court's order was issued on 23/09/2022, but the applicant knew about it on 16/12/2022 when the time within which he could file revision application had already lapsed. The learned Advocate explained that the order was not appealable and the delay in taking necessary steps was not due to the applicant's negligence. In his affidavit, Mr. Kelvin has raised 4 points of illegality in paragraph 11 which are worth consideration by the High Court. He prayed this court to grant an extension of time for filing an application for revision for the ends of justice.

I have carefully examined the case file and considered the affidavits of both learned Advocates. I find the task of this court is to decide whether the points raised by the applicant are worth consideration by this court and granting extension of time. It is undisputed that the High Court has discretion to grant or not to grant extension of time, but the said discretion has to be exercised judicially. In essence, the High Court cannot grant an extension of time if the applicant has not shown good reasons for the delay or that there is an arguable issue. Another factor which is usually considered before granting the extension of time is the degree of prejudice to the respondent if the application is granted.

In the case of ***Lyamuya Construction Company Ltd*** (*supra*) the Court of Appeal had this to say:

"As a matter of general principle, it is in the discretion of the court to grant extension of time. But that discretion is judicial and so, it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrary."

In a bid to advance reasonable or sufficient causes that delayed the applicant to file his application in time, it is stated in the affidavit that the impugned order was granted to the respondent without the applicant being afforded an opportunity to be heard. It is also on record that the Juvenile Court issued the challenged order without vacating its earlier order of 09/04/2020. Further, one of the grounds of application as adduced by the applicant's Advocate is the existence of illegalities in the order sought to be challenged.

Although the law does not define what a good cause is, case law has established factors to be considered in determining whether good cause has been established or not. One of them is the illegality of the decision sought to be challenged. In the case of ***Eqbal Ebrahim v Alexander K. Wahiyungi***, Civil Application No. 235/17 of 2020, the Court of Appeal held that the issue of illegality justifies an extension of time so that the point of illegality can be ascertained and if established corrected accordingly. The position was also stated in ***VIP Engineeringa and Marketing limited & 3 Others v Citibank Tanzania limited***, consolidated Civil Reference No. 6,7 and 8 of 2006 where the Court of Appeal held thus:

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes "sufficient reasons" within the meaning of rule 8 of the Rules for extending time."

Being guided by the decisions of the Court of Appeal that the issue of illegality justifies an extension of time even where the Applicant has not

shown a good cause for the delay, I find this application meritorious. The application for extension of time to file application for revision is hereby granted to the applicant. The Applicant is thus, directed to file an application for revision within thirty (30) days from the date of this ruling. Given the outcome of the application, each party shall bear his own costs.

It is so decided.


KADILU, M.J.
JUDGE
28/05/2024.

Ruling delivered in chamber on the 28th Day of May, 2024 in presence of Mr. Akram Magoti, advocate holding brief for Mr. Kelvin Kayaga, Advocate for the Applicant and Mrs. Johari Peter Masonga, the respondent.




KADILU, M.J.
JUDGE
28/05/2024.