

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM  
COMMERCIAL APPLICATION NO.8 OF 2021**

NADDS BUREAU DE CHANGE LIMITED.....1<sup>st</sup> APPLICANT  
NELSON DANIEL SWAI.....2<sup>ND</sup> APPLICANT

VERSUS

Y2K BUREAU DE CHANGE LTD.....RESPONDENT

Last Order: 06/12/2021  
RULING : 25/02/2022

**RULING**

**NANGELA, J.:**

This ruling is in respect of an application which was filed in this Court by way of a chamber summons under sections 14 (1), 21(1) and (2) of the Law of Limitation Act, Cap.89 of 2019 R.E. and was supported by an affidavit of one Nelson Daniel Swai, the 2<sup>nd</sup> Applicant.

In this application, the Applicants are seeking for the following orders:

1. That, this Honourable Court be pleased to grant an extension of time to lodge an appeal against judgment and decree of the

Resident Magistrate Court of Dar-es-Salaam at Kinondni in Civil Case No.175 of 2019 between *Y2K Bureau De Change Ltd vs. NADDs Bureau De Change Ltd and Nelson Daniel Swai*, dated 21<sup>st</sup> May 2020.

2. Costs of this application be granted.
3. Any other relief(s) this Honourable Court shall see fit and just to grant.

Before this application took off it was derailed by a preliminary objection which, nevertheless, was dismissed after the hearing of the parties.

Following the overruling of the preliminary objection, the parties were directed, on the 1<sup>st</sup> of November 2021 to file written submission and dispose of this matter through that mode. Both parties duly filed their submissions and, I will summarize their submissions hereunder, before I analyze the matters before me in the eyes of the law and render my verdict.

In his written submission, Mr Emmanuel Ally, learned advocate for the Applicants submitted that, this application has its origin in the Civil Case No. 175 of 2019 at Resident Magistrate's Court of Kivukoni at Kinondoni,

where the matter was heard ex-parte and the judgment was not in favour of the Applicants herein.

The Applicants submitted that, an attempt was made to set aside the ex-parte hearing order, the judgment and decree thereto, but all such efforts were in futility. The Applicants submitted that, being aggrieved by the judgment and decree, the Applicants intend to lodge an appeal against the same, but since they are already out of time, they are now seeking for extension of time within which they will file their appeal out of time.

Mr Ally submitted that, this Court has discretion to extend time within which an applicant may act, outside the normal set time by the law. He contended that, the discretion of this Court is however exercised 'in accordance with the rule of reason. He also submitted that, the Applicants are also aware that they have to account for the reasons of delay, and, that, their delay should not be inordinate delay, if their application is to succeed.

Mr Ally asserted that, the reason why the Applicants delayed to lodge their appeal is essentially technical delay. He submitted that, by the 4<sup>th</sup> day of June 2020, this is immediately after the judgment was pronounced by the Court below on the 21<sup>st</sup> May 2020, up to 29<sup>th</sup>

December 2020 (when a ruling to set aside the ex-parte judgment was delivered), the Applicant was stuck in the Court room corridors.

He submitted, therefore, that, technically, the time spent from the 04<sup>th</sup> of June up to the 29<sup>th</sup> December 2020, is technically an excusable technical delay. To further support his submission, Mr Ally relied on the case of **Fortunatus Masha vs. Willian Shija and Another**, [1997] TLR 154. He contended that, from that case, the Court of Appeal held that, a distinction has to be made between normal delays and technical delays as the latter is excusable delay.

In his further submission, Mr Ally contended that, the days between 21<sup>st</sup> May and 4<sup>th</sup> of June 2020 were days used to prepare for the filing of the application to set aside the ex-parte judgment, order and decree.

He submitted, therefore, that, it took a further 28 days from the pronouncement of the ruling in respect of the Applicants' application to set aside the judgment and decree of the lower Court until when this application was filed in this Court on the 26<sup>th</sup> January 2020.

Mr Ally contended further that, the 28 days spoken of, were spent to engage an advocate who would represent the Applicants before this Court. In view of the

above account, Mr Ally urged this Court to grant the prayers sought in the chamber summons. In his further submission, Mr Ally submitted that, the Applicants are also praying for an extension of time because the decision of the lower court is basically tainted with an illegality.

Describing the nature of that illegality, Mr Ally submitted that, the Court presided over a matter for which it lacked pecuniary jurisdiction. Referring to the decision of the Court of Appeal in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appl. No.2 of 2010 (CAT), he urged this Court to grant the prayers.

The Respondent's learned counsel, Mr Robert Makwaia, did also file his written submission. In his brief submission, he sought for leave to adopt the counter affidavit filed by one Silvanus Miraji Bernard, dated 11<sup>th</sup> February 2021 to form part of his submission.

Mr Makwaia went further to submit that, matters filed in Court must come to an end. To boost his views he reiterated the Latin Maxim "*interest rei publicae ut sit finis litium*", which means that, the interest of the general public requires that there must be an end to litigation. He submitted, thus, that, the submission made by the

Applicants regarding technical delay as a cause for their delay was indeed a genuine case. However, he disputed the issue of illegality as a reason which should be considered in granting this application. He contended that, the same cannot be an issue of discussion at this stage but should be an issue for discussion if the intended appeal will be lodged.

Essentially, looking at the submission made by the Respondent, there is an outright support of the reasons disclosed by the Applicants including even the second one on the issue of illegality. It is unfortunate that, the Respondent's legal counsel has wasted much of the time which could have been saved, by indulging in unnecessary objections and even the filing of counter affidavit to contend the application and at the end come up with a two page submission acknowledging that the Applicant has a cause that needs to be attended by the Court.

Perhaps I should reiterate what the Court in **Mukisa Biscuits vs. West End Distributors Manufacturing Co. Ltd [1969] E.A 696**, stated in respect of the need to rescue time by not indulging in unnecessary objections meant to delay matters lodged in

Court. In that particular case, the Court emphatically stated that:

"The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop."

Although this Court did hear the parties' preliminary objection and, indeed each party is at liberty to raise legal issues as preliminary objections, the above admonition in the **Mukisa Biscuits'** case is very instrumental and needs to be taken aboard by each and every practicing advocate, as it requires that, time of the Court be saved from unnecessary objections and the like.

In fact, there should be no need to contest an application which the contesting party knows very well that it should be conceded to and allow the Court to move on to the next step. That will not only save the time of the Court but also the parties' costs.

Having said all that, and taking into account that the Respondent does concede that the Applicants were technically delayed, the case of **Fortunatus Masha vs. Willian Shija and Another**, [1997] TLR 154 is indeed applicable in this matter.

Likewise, the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appl. No.2 of 2010 (CAT), is well applicable here since, once there is an allegation of illegality, the Court should grant time sought by an Applicant. Even though the Respondent dispute that point from being considered as a relevant factor, the fact is that, since a court of law cannot sanction what is illegal, an illegality once brought to the attention of court, overrides all questions of pleading.

The above principle regarding an alleged illegality in an application for extension of time, was reiterated in the in the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** [1992] TLR 182 and also in the case of **Mgombayeka Investment Co. Ltd and 20 others vs. DCB Bank PLC**, Civil Appl. No.500/16 of 2016 (unreported).

In view of the above, this Court settles for the following order:

1. That, the prayers sought by the Applicants are hereby granted.
2. The Applicants' time to file an appeal against the judgment and



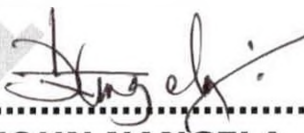
decree of the Resident Magistrate Court of Dar-es-Salaam at Kinondni in Civil Case No.175 of 2019 is hereby extended and the intended appeal should be lodged in Court within 14 days from the date of this ruling.

3. In the circumstances of this application, I make no orders as to costs.

**It is so ordered.**

**DATED ON THIS 25<sup>TH</sup> FEBRUARY 2022**



  
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**DEO JOHN NANGELA**  
**JUDGE**