

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 592 OF 2022**

**(Arising from the Judgment and Decree of this Court [Hon. A. Msafiri, J] in**

**Land Appeal No. 45 of 2022 dated 4<sup>th</sup> August, 2022.)**

**MARIAM SEIF.....1<sup>ST</sup> APPLICANT**

**SALMA SEIF.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SEIF ABRAHAMANI SEIF.....RESPONDENT**

**RULING**

23/03/2023 & 30/03/2023

**L. HEMED, J**

Miserably, the crux of the matter at hand appears to have arose from a family dispute which in deed threatens their harmony as relatives. The applicants *vide* the chamber application filed on 22<sup>nd</sup> day of September, 2022 are seeking to move this Court on the following prayers to name:

- 1. That the Honourable Court be pleased to extend time to the applicant (sic) to file an application for leave to appeal to the Court of Appeal of Tanzania in respect of the decision and findings of the High Court (sic), Land Division dated 4<sup>th</sup> August, 2022 made by A. Msafiri, J in Land Appeal No. 45/ 2022.*
- 2. That the Honourable Court be pleased to extend time to the applicant (sic) to file a notice of appeal to the Court of Appeal of Tanzania in respect of the decision and findings of the High Court (sic), Land Division dated 4<sup>th</sup> August, 2022 made by A. Msafiri, J in Land Appeal No. 45/ 2022.*
- 3. Costs of the application and;*
- 4. Any other relief as the Honourable Court and or Tribunal (sic) deems fit and just to grant.*

The present application is broached under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and the Court of Appeal Rules, 2019. It is supported by a joint affidavit affirmed by Mariam Seif and Salma Seif hereinafter the applicants and opposed by a counter affidavit of one Seif Abrahamani Seif the respondent hereof.

On 21<sup>st</sup> day of February, 2023, the parties were ordered to argue the application by way of written submissions. The parties promptly complied with the Court's directives.

The applicants were enjoying the legal services of the learned advocate Mr. Ahmed Abdallah Mwita, he argued that, the delay of five days is not inordinate due to the facts that, the applicants delay was not on their fault but awaiting for further legal proceedings as advised by their previous advocate while the time to file the notice of appeal and application for leave to appeal to the Court of Appeal of Tanzania had started to run out of time. To back up his submission, he referred this Court to the decision of **Tanzania Revenue Authority vs. Tango Transport Co. Ltd**, and **Tango Transport Co. Ltd vs. Tanzania Revenue Authority**, Consolidated Civil Applications No. 4 of 2009 and 9 of 2008, (CAT-DSM), (Unreported) at page 30.

Submitting on the issue of illegality, he stated that, the ground of illegality constitutes a good cause for extension of time as discussed in the case of **Principal Secretary Ministry of Defence and National Service vs. Divram P. Valambhia** [1992] TLR 387. He maintained that, there is no degree of prejudice to the respondent if the application is granted because the applicants are seeking for the right to be determined

which will also benefit the respondent. At last, he prayed that, the orders sought in the chamber application be granted with costs.

In reply, thereto, Mr. Ndanu Emmanuel learned counsel appearing for the respondents contested the application. Primarily, he prayed to adopt the contents of the respondent's counter affidavit which was filed before this Court on the 30<sup>th</sup> day of November, 2022 to form part of his submissions. He asserted that, in the celebrated case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) did set the criteria's to be considered by the Court before one is granted extension of time.

He contended that, the argument that the applicants delay in lodging and filing the notice of appeal for five days and those five days was due to the breakdown of communication between the applicants and their previous lawyer is a hollow statement. He stated that, it has not been told of what type of communication was that and in what mode was being used so that this Court can evaluate and weigh to the extent of such communication breakdown. He submitted further that, the applicants have filed this application for extension of time on 22<sup>nd</sup> day of September, 2022, 18 days after the expiration of the time for lodging notice of appeal

and leave to appeal to the Court of Appeal of Tanzania. He further stressed that, the false facts of 5 days of delay makes their joint affidavit worth not to be trusted and acted upon by this Court as it contained false statements.

He asseverated that, the applicants through their advocate have failed to point out which illegality they have spotted in the judgment of this Court which they intend to challenge before the Court of Appeal of Tanzania. He cited the case of **Ratnam vs. Cumarasmy & Another** (1964) 3 ALL E.R 935 which was quoted by the Court of Appeal of Tanzania in the decision of **Regional Manager Tanroads Kagera vs. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (Unreported) to buttress his asseveration. To conclude, he strongly submitted that the applicants have failed to adduce good and sufficient grounds to warrant this Court to grant this application, hence, he prayed for the same to be dismissed with costs.

Having judiciously painstaking the applicants' affidavit in support of the application, counter affidavit by the respondent herein objecting the application and written submissions thereof, it appears to me, first, to determine whether the applicants' have established sufficient cause(s) for

this Court to extend time within which they may file leave to appeal simultaneously with notice of appeal to the Court of Appeal of Tanzania.

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 arbitrarily. Guidelines have been formulated by the Court of Appeal to that effect as stated in the eminent case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) at page 6 & 7 thus:-

- 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; and*
- d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

As per paragraph 7 of the joint affidavit, the applicants alleged to have delayed to take the necessary steps lodging the notice of appeal and leave to appeal to the Court of Appeal of Tanzania only for five days. But that is a blatant distortion of the truth. The decision of this Court [Hon. A. Msafiri, J] in respect to Land Appeal No. 45 of 2022 was delivered on 4<sup>th</sup> August, 2022 as factually stated in paragraph 4 of the joint affidavit, the instant application was filed on 22<sup>nd</sup> day of September, 2022 upon lapse of 48 days from the date of Judgment. Therefore, the applicants have failed to account for all 48 days in their joint affidavit.

In the case of **MPS Oil Tanzania Limited & 2 Others vs. Citi Bank Tanzania Limited**, Civil Application No. 4 of 2016, it was held that:

*"...In an application for extension of time, the position of this Court has consistently been to the effect that the applicant has to account for every day of the delay".*

Additionally, I deem it apposite to borrow a leaf from the case of **Magnet Construction Limited vs. Bruce Wallace Jones**, Civil Appeal No. 459 of 2020, (CAT-MUSOMA), (Unreported) at page 9 and 10 of the Judgment of the Court which principled that:

*"Indeed, for the Court to exercise that discretion, the applicant must satisfy it that since being aware of facts of*

*delay that he is out of time, his conduct must portray that he acted expeditiously and diligently in lodging the application for extension of time...In the instant appeal, we are satisfied that the appellant failed to account for the period of 51 days after Misc. Labour Application No. 7 of 2020 was struck out till when the application for extension of time was formerly lodged before the High Court as correctly conceded by Mr. Njowoka in his submission at the hearing of the appeal. Consequently, we dismiss the first and second ground of appeal”.*

So, to say, the communication breakdown between the applicants and their advocate is not or has never been a good and sufficient cause for delay to warrant this Court to grant extension of time. As such, I am at one with the respondent’s advocate that, the so-called communication breakdown is not legally justified in the circumstances of this application.

Regarding the issue of illegalities, it has been held in mountain of decisions that where it exists and pleaded as a ground the same constitutes sufficient cause for extension of time. Among those decisions, are the case of **Lyamuya Construction Company Ltd** (*supra*), the case of **The Principal Secretary, Ministry of Defence and National**



**Service vs. Devram Valambhia** [1992] TLR 387 and the case of **Magnet Construction Limited** (*supra*). In this application, the same has not been pleaded or factually stated thereof other than being presented in the applicants' submissions which is contra wise to the rules governing applications. I am of the settled view that, illegality was not sufficiently demonstrated by the applicants. It has been stated by the advocate in his submissions and not by the applicants in their joint affidavit.

I fully subscribe to the decision of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference No. 13 of 2019, (CAT-DSM), (Unreported) at page 8 of the Ruling of the Court which stated that:

*"...it is our conclusion that for a decision to be attacked on ground of illegality, one has to successfully argue that the Court acted illegally for want of jurisdiction, or for denial of right to be heard or that the matter was time barred".*


From the foregoing, time will not be extended in every situation whenever illegality is alleged as an issue by the applicants. It all depends on the circumstances of each case and the material placed before the Court. Astonished, the applicants have never attached the decision in


Land Appeal No. 45 of 2022 to their application which is subject of the alleged illegalities for this Court to put it under proper scrutiny instead they have stated it from the blue or vacuum. After all, for the ground of illegalities to suffice, it has to manifest on the face of record. It should not be speculative as in the matter at hand.

In the end, I am settled that this application is devoid of merit, and is hereby dismissed. Parties shall bear their respective costs.

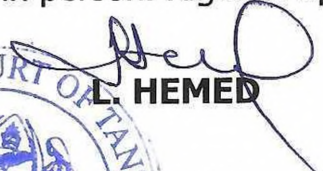
Order accordingly.

**Dated at Dar es salaam** this 30<sup>th</sup> day of March, 2023.

  
**L. HEMED**  
**JUDGE**



**COURT:** Ruling delivered this 30<sup>th</sup> day of March, 2023 in the presence of the applicants appearing in person. Right of appeal fully explained.

  
**L. HEMED**  
**JUDGE**  
**30/03/2023**

