

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 402 OF 2019

HASSAN ABDULHAMID..... APPLICANT

VERSUS

ERASTO ELIPHASE..... RESPONDENT

**(Application for extension of time to file an application for leave
to Appeal to the Court of Appeal against the decision of the
High Court of Tanzania (Dar es Salaam District Registry)
at Dar es Salaam)**

(Mugeta, J)

dated the 27th day of September, 2018

in

Civil Appeal No. 232 of 2017

.....

RULING

19th February & 16th March, 2020

SEHEL, J.A:

Before me is an application for extension of time to lodge an application for leave to appeal to this Court for the second time. It is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (hereinafter referred to as the Rules) and supported by an affidavit of Samuel Shadrack Ntabaliba, learned advocate for the applicant.

The brief background are such that: the respondent successfully sued the applicant before the District Court of Morogoro at Morogoro in Civil Case No. 28 of 2016 whereby the applicant was ordered to pay the respondent TZS 6,154, 0000 and TZS 85,000,000 as special general damages, respectively. Aggrieved by that decision, the applicant appealed to the High Court, Civil Appeal No. 232 of 2017. His appeal was dismissed for lacking merit. Still aggrieved, the applicant applied for leave to appeal to the High Court since the matter emanated from the District Court. That application for leave was dismissed for lacking merit. The application was dismissed on 13th August, 2019. The applicant having been left with an option of coming to this Court to seek leave filed the present application for extension of time because he found himself out of time.

At the hearing of the application, Mr. Samuel Shadrack, learned advocate appeared for the applicant. The respondent did not enter appearance despite being duly served with the notice of hearing. According to the affidavit of Salum Edward, court serving officer, shows that the notice was received by one Mkaleso Nyange, legal officer from

Green Attorneys on the 3rd day of February 2020 at 01:45 Hrs on behalf of Godfrey Gabriel Mwansoho, learned advocate for the respondent. Consequently, Mr. Shadrack prayed to proceed with the hearing in absence of the respondent.

On my part, after being satisfied that the respondent was duly served, I allow the applicant to proceed with the hearing in absence of the respondent.

Mr. Shadrack submitted that the gist of the application is due to the fact that the applicant was belatedly supplied with the documents for filing an application for leave. He said by the time the applicant was supplied, the fourteen days period for filing extension of time already lapsed. He added that according to Rule 45 (a) of the Rules an application for leave has to be filed within fourteen days from the date of the ruling of the High Court and shall be accompanied with a copy of the ruling or order.

Secondly, he contended that the High Court in its refusal gave two reasons. One of them being that there was no notice of appeal attached. It was the view of Mr. Shadrack that was an illegality because the law, in

terms of Rule 46 (1) of the Rules, does not require the notice of appeal to be annexed rather it requires for its lodging. With that submission he prayed for the application to be granted.

In the present application as I said the applicant is seeking an extension of time within which to file an application for leave to appeal to this Court. Rule 10 of the Rules governs an application for extension of time. It provides:

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

It follows then that this Court has discretionary power to grant or refuse an application for extension of time. In that regard, a party seeking an extension of time like the applicant herein has to advance good cause for the Court to grant it. Good cause is a relative term. What amount to good cause includes whether the application has been

brought promptly, absence of any invalid explanation for delay and diligence on the part of the applicant. (See **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported)).

Furthermore, it is settled law that a claim of illegality of the challenged decision constitutes sufficient cause for the extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for delay. This was so held in the case of **VIP Engineering and Marketing Limited and Three Others Vs Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CA (unreported) thus:

"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."

In this application, it is on record that the ruling refusing leave was delivered on 13th August 2019. In terms of Rule 45 (b) of the Rules, an

application for leave, like the present one, must be made within fourteen days counting from the date of the refusal by the High Court. As rightly submitted by Mr. Shadrack, the application for leave must be attached with the copy of the ruling and drawn order that refused leave as provided under Rule 49 (3) of the Rules. The applicant deposed that the ruling refusing leave though was delivered on 13th August 2019 but he was belatedly supplied. However, the applicant did not state when he was supplied and even the attached ruling and drawn order do not indicate the date when the applicant was supplied with the copies of ruling and drawn order. In the circumstances, I find that the applicant has failed to prove his allegation of being belatedly supplied with the copies of ruling and drawn order. He has failed to demonstrate the cause of his delay in lodging the application for leave. I see no merit on this ground. I proceed to dismiss it.

Another reason advanced by the applicant is that the decision sought to be challenged is tainted with illegalities. Unfortunately, apart from swiping allegation in the notice of motion that there is illegality there was no mention of the kind of illegality that is being alleged.

Although I agree with Mr. Shadrack that an allegation of illegality by itself suffices for an extension of time and it does not matter whether the applicant has accounted for each delay. But in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported)) it was insisted that:

"...the alleged illegality must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process."

In the application at hand, the applicant has not stated either in his notice of motion or affidavit in support of the application the kind of illegality complained of in the decision to which he is intending to challenge by way of appeal. What is gathered is the illegality occasioned by the High Court in refusing leave that the requirement of attaching a copy of notice of appeal is not provided in the law. Such allegation of illegality does not help the applicant in the present application because after the refusal of leave by the High Court, the applicant has a second

chance to seek leave to this Court. The applicant's claim of illegality in respect of the intended impugned decision is wanting.

In the end, I hold that the applicant has failed to account for his delay. The application is therefore lacking merit and it is hereby dismissed. I make no order for costs because the respondent did not file any pleading and he was not absent on the hearing date.

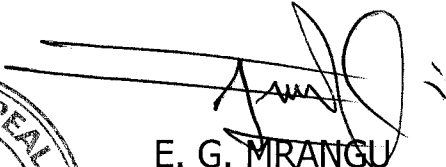
It is so ordered.

DATED at DAR ES SALAAM this 11th day of March, 2020.

B. M. A Sehel
JUSTICE OF APPEAL

The Ruling delivered this 16th day of March, 2020 in the presence of Bakari Juma, holding brief for Mr. Samuel Shadrack, Counsel for the Applicant and in absent of the Respondent who was dully served, is hereby certified as a true copy of the original.




E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL