

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

CIVIL APPLICATION NO. 625/08 OF 2022

OKECH AKOMO.....APPLICANT

VERSUS

KONSILATA ADOYO.....RESPONDENT

**(Application from the Judgment of the High Court of Tanzania
at Mwanza)**

(Rumanyika, J.)

dated 18th day of January, 2019

in

Misc. Land Case Appeal No. 21 of 2018

RULING

7th & 8th December, 2022.

KITUSI, J.A.:

The applicant obtained from the Registrar of the High Court, Mwanza registry, a certificate of delay that would enable him lodge his intended appeal out of time. However, for some reason he missed that boat, so he had to file this application under rule 10 of the Court of Appeal Rules, 2009 (the Rules) to seek extension of time to lodge the intended appeal.

The main reasons for the delay as cited in the affidavit taken by the applicant is illness of his infant son and illegality of the decision intended to be appealed against. There is neither an affidavit in reply nor appearance by the respondent. Having been satisfied through an affidavit of the court process server that the respondent resisted service, I proceeded in her absence in terms of rule 63 (2) of the Rules.

The applicant was present in person but Mr. Cosmas Kithuru, learned advocate representing him, is the one who addressed me on the application. He argued the two points for my consideration. The first is illegality. The learned advocate submitted that the High Court decided the case on the basis of adverse possession by the respondent who was a mere invitee in the disputed land, and that according to him that constitutes an illegality. He cited the case of **Mohamed Salum Nahdi v. Elizabeth Jeremiah**, Civil Reference No. 14 of 2017 (unreported). The learned advocate suggested that the fact that the High Court certified that issue as a point of law for appeal purposes, qualifies it to be an illegality.

With respect, there is a difference between a point of law for consideration on appeal and an illegality for consideration in an application for extension of time. The distinction may be appreciated in the Court's decision in **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 and **Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (both unreported). In the latter case it was held in part:-

"Since every party intending to appeal seeks to challenge the decision either on point of law or fact, it cannot, in my view, be said in VALAMBIA's Case that the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court emphasized that such point of law must be that of sufficient importance and I would add, it must be apparent on the face of the record such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process".

With respect, the point referred to by the applicant's advocate could be a good ground of appeal on a point of law but it does not constitute an illegality, in my view. Besides, it can only be discovered after long-drawn arguments as it is not apparent on the face of the record. The applicant has therefore failed to make a case for extension of time on ground of illegality.

Secondly, Mr. Kithuru argued that the delay was due to the applicant attending to his sick son. When I drew counsel's attention to the certificate of delay, he agreed that the appeal ought to have been lodged by 6th October, 2019, which would be the 60th day. Thus, the contention under paragraph 6 of the affidavit that the excluded days expired on 9th January, 2020 is utterly wrong.

Though the application is unopposed, the applicant's duty to account for each day of the delay remains. See **Ngao Godwin Losero** (supra). Some of the factors to be considered in determining an application for extension of time is the length of the delay, in that it should not be inordinate (**Zahara Kitindi & Another v. Juma Swalehe & 9 Others** [2017] T.L.R. 608). Also, whether the

applicant acted promptly. (**CRDB Bank PLC v. Finn W. Petersen & Others** [2018] T.L.R. 91.).

In the case under my consideration the period that needs to be accounted for is from 7th October, 2019 to 14th July, 2022 when the applicant contacted his lawyer. I note that this application was filed on 18th July, 2022, just 4 days later.


The period of 33 months from 7th October, 2019 to 14th July, 2022 is inordinate in my view. Is there an account of every day in the 33 months of the delay? I am afraid there is no such account. The medical chits attached to the affidavit show that the applicant's son was discharged from Kowak District Hospital for referral to Bugando Medical Center on 16th August, 2019, but the records of Bugando Medical Centre do not suggest when was the applicant's son admitted at that facility and when was he discharged. I cannot act on the applicant's bare word to assume that the said son remained hospitalized for almost three years. If anything, there is a Clinic Appointment Card which shows that the applicant's son was attended at Bugando Center on 26/4/2022 and on 12/7/2022, but this card does not help in addressing the question I posed a while ago,

whether the applicant's son was in hospital for all 33 months. In addition, the inordinate length of the delay and the potential inconvenience to the other party, militate against my exercise of discretion in favour of the applicant. I find no merit in the application and dismiss it with costs.

DATED at **MWANZA** this 7th day of December, 2022.

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 08th day of December, 2022 in the presence of Mr. Inhad Mushongi, learned counsel for the Applicant and in the absence for the Respondent, is hereby certified as a true copy of the original.


C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL