

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

MISC. APPLICATION NO. 24 OF 2022

*(Arising from Misc. Civil Application No. 21/2017 of the High Court of Tanzania before
Hon. Matogolo, J, Original Civil Case No. 8/2013 of the District Court of Mufindi before
Hon. D.S Nyakunga, RM)*

UNILEVER TEA TANZANIA LTD **APPLICANT**

VERSUS

MIRAJI MPIRA **RESPONDENT**

RULING

22nd Sept. 2022 & 31st March, 2023

I.C. MUGETA, J:

The applicant seeks extension of time to file a notice of appeal to the Court of Appeal of Tanzania (CAT) against the decision of this court. The main grounds supporting the application as stated in the affidavit are that the decision and proceedings are tainted with illegalities and irregularities. The other reason is technical delay in that the applicant has been all along in court pursuing the course of justice.



The respondent resisted the application by contending in the counter affidavit that there is no any illegality in the decision as alleged and that the applicant has not adduce sufficient reasons to warrant the granting of this application.

At the hearing of the application, the applicant enjoyed the legal service of Mr. Emmanuel Kyashama, learned advocate, whereas Mr. Dickson Sanga, learned advocate appeared for the respondent. The application was argued by filing written submissions.

On illegalities, the applicant's counsel submitted that the drawn order in Misc. Civil Application No. 21 of 2017 does not reflect the reasons for the decision in the ruling. The reason for disposal of the application in the ruling, he argued, was that the applicant failed to account for each day while the drawn order shows that the application was disposed on a preliminary objection. In his view, this is contrary to Order XX Rule 6(1) of the Civil Procedure Code, Cap. 33 R.E 2022 which provide that the decree shall agree with the judgment, the same applies to drawn order and ruling.

He submitted further that there are illegalities on the face of record as oath was not administered to the witnesses and signature not apprehended

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after recording witness statements contrary to Order XVIII Rule 5 of the CPC and section 4(a) of the Oaths and Statutory Declarations Act [Cap. 34 R.E 2019]. To buttress his submission, he cited the case of **Unilever Tea Tanzania v. Godfrey Oyema**, Civil Appeal No. 416 of 2020, Court of Appeal of Tanzania (CAT) at Iringa. He also cited **Eqbal Ebrahim v. Alexander K. Wahyungi**, Civil Application No. 235/17 of 2020, CAT at Dar es Salaam (unreported) and **The Principal Secretary Ministry of Defence and National Service v. Devram Valambhia [1992] TLR. 182** which provide that illegality is sufficient ground for extension of time.

On the ground of technical delay, the applicant's counsel submitted that the applicant has been in court records since 2013 challenging the impugned judgment. He argued further that when Misc. Civil Application No. 21 of 2017 was struck out on 14th August 2019, on 12th September 2019 the applicant filed his Notice of Appeal which was later struck out on 3rd May 2021 for failure to take essential steps consequently Civil Appeal No. 96 of 2020 was then withdrawn on 29th September 2021. The applicant then filed the present application after the lapse of 36 days as she was taking steps to institute the present application. In his view, the doctrine of technical delay is applicable in the circumstances. To support his argument,

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he cited the case of **Chama cha Kutetea Haki na Maslahi ya Walimu Tanzania (CHAKAMWATA) v. The Registrar of Organizations**, Misc. Labour Application No. 3 of 2020, High Court of Tanzania (HCT) at Mbeya (unreported).

In reply, the respondent's counsel submitted that there is no illegality and that illegality was never raised in Misc. Civil Application No. 21 of 2017. In his view, the illegalities alleged by the applicant are minor errors which can be rectified. Therefore, the errors are not of sufficient importance to require the attention of the CAT. He contended that the illegalities that qualify as grounds of extension of time are issues like time limit, jurisdiction and locus standi. To support his contention, he cited the case of **Omari Ibrahim v. Ndege Commercial Services Ltd**, Civil Application No. 83/01 of 2020, CAT at Dar es Salaam (unreported).

On the failure by the trial court to administer oath and append signature after testimony of witnesses, the respondent's counsel submitted that the applicant did not raise this ground in Misc. Civil Application No. 21 of 2017. Moreover, the applicant did not attach a letter to prove that she requested copy of the proceedings to prove that the proceedings are authentic. To

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support his argument, he cited the case of **Henry Zephyrine Kitambwa v. The President of the United Republic of Tanzania & Others**, Civil Appeal No. 114 of 2020, CAT at Dar es Salaam (unreported) and **The Board of Trustees of the National Social Security Fund v. New Kilimanjaro Bazaar Limited**, Civil Appeal No. 16 of 2004, CAT at Arusha.

He argued further that, the doctrine of technical delay does not favor the applicant as he has failed to account for each day of delay as required in applications of this nature as it was held in **Jehangir Aziz Abdulrasul & Others v. Balazi Ibrahim Abubakar & Another**, Civil Application No. 265/01 of 2016, CAT at Dar es Salaam (unreported), **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015, CAT at Arusha (unreported).

The respondent's counsel also argued that the applicant's appeal has no chances of success as Application No. 21 of 2017 having been withdrawn is deemed dismissed in accordance with Rule 77 of the Court of Appeal Rules. Therefore, the doors of the CAT in respect of this matter are closed. To support his contention, he cited the case of **Heykel Berete v. Dero**



Investment Ltd, Civil Revision No. 1 of 2010, CAT at Dar es Salaam (unreported). He distinguished the cases cited by the applicant on failure to administer oath.

In his rejoinder, the applicant's counsel reiterated his submissions in chief and differentiated the cases cited by the respondent. On the authenticity of the proceedings, he argued that the proceedings are notarized as true copy of the original.

The issue for determination in this application is *whether the applicant has adduced sufficient grounds for this court to exercise its discretion to grant extension of time.*

In an application for extension of time, the applicant has to show sufficient reasons for the court to exercise its discretion. What amounts to good cause is a question of fact and depends on the facts of each case. Some of the factors were considered in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported). The factors are accounting for all day of delay, the delay should not be inordinate, the applicant must show diligence and not

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apathy, negligence or sloppiness in prosecution of the action that he intends to take; and the existence of a point of law of sufficient importance such as the illegality of the decision sought to be appealed against. The applicant's application is based on three reasons which are irregularities, illegalities and doctrine of technical delay.

I will discuss each ground raised by the applicant.

For a point of law to constitute a good cause for extending time, it must be of sufficient importance and apparent on the face of the record. The applicant alleged that the trial court did not administer oath to witnesses. I have checked the original record of the trial court, the trial court administered oath to all witnesses before they testified and signed after recording each testimony. On the variance between the ruling and the drawn order, the learned counsel for the applicant has argued that it violates. Moreover, the applicant also alleged that the judgment and decree were extracted on different dates contrary to Order XX Rule 6(1) which analogously apply to drawn orders. With respect to the applicant's counsel, the said provision requires the decree to contain the date on which the judgment was pronounced. The drawn order at issue duly complied with



this requirement as it dated the 14th August, 2019 which is the date the ruling was pronounced. However, the whole argument and the cited law are misconceived.

Conversely, the learned counsel intended to argue that the ruling and the drawn order are at variance as far as reasons for the decision are concerned. This is because while the ruling states that the application was struck out as the applicant did not account for each day of the delay or advance sufficient reasons to grant extension of time, the drawn order stated that the application is dismissed on sustaining a preliminary objection.

Indeed, that is an irregularity. However, the same cannot be cured by appealing to the Court of Appeal but by applying to the same court which passed the ruling and drew the order to have the error corrected by issuing a correct drawn order.

Again, the applicant relied on the technical delay doctrine. In her submissions she contended that she has been in court corridors since 2013 to 3rd May 2021 when her notice of appeal to the CAT was struck out for failing to take essential steps. This application was filed in court on 3rd

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November 2021. In my view, the period the applicant ought to have accounted for is not between 3rd May, 2021 when the notice of appeal to the CAT was struck out and 3rd November, 2021 but between 29th September when the appeal No. 96/2022 was withdrawn and 3rd November, 2021 when this application was filed. I have read the affidavit supporting the application, the account given for that period is that the applicant was working towards filing this application. It is my view that the period of about 36 days cannot be considered as inordinate delay.

Consequently, I hold that the applicant has failed to establish irregularities and illegalities in the decision but he has managed to account for each day of the delay. In the event, on the ground of technical delay and accounting for each day of the delay, I grant the application. Cost in the course.



I. C. Mugeta
I.C MUGETA
JUDGE
31/03/2023

Court: Ruling delivered in chambers in the presence of the Mr. Jonathan Wangubo, learned advocate for the applicant and the respondent in person.

Sgd: M. A. MALEWO

DEPUTY REGISTRAR

31/3/2023