

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

MISC. CIVIL APPLICATION NO. 12 OF 2022

(Originating from Civil Case number 7 of 2021, District Court of Morogoro)

TUMSIFU ABINAE MBOGELA.....1ST APPLICANT

AYOUB ABINAE MBOGELA 2ND APPLICANT

VERSUS

JOHN EDWARD KOMBA 1ST RESPONDENT

VALENTINA BENEDICT NDOMONDO 2ND RESPONDENT

RULING

Date of last order: 30/03/2023

Date of ruling: 28/04/2023

MALATA, J

The applicants herein are seeking for extension of time within which to appeal against the decision of the District Court in Civil case no. 7 of 2021 out of time. The application is preferred under section 14(1) of the Law

of Limitation Act, Cap. 89 R.E.2019 and is supported by an affidavit sworn jointly by both applicants.

When the application came for hearing, the Applicants were represented by Mr. Jovin Manyama learned Advocate whereas the respondents were represented by Mr. Godfrey Mwasoko learned counsel.

To start with Mr. Manyama prayed the affidavit in support of the application be made part of his substantive submission of the application. He submitted that, the position of the law is that extension of time is granted at the court's discretion upon sufficient reasons being given. Courts have established factors to be considered in the determination in such kind of application.

To support his submission, he cited the case of **Lyamuya Construction Ltd vs. The Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Appeal no. 2 of 2010 at page 10. As per the applicants' affidavit there are two reasons for delay, **one**, is a delay to get a copy of judgement and **two**, is illegalities in the judgement, he submitted. Paragraphs 5, 6 and 7 of the affidavits indicated that the failure to appeal within time was due to delay in obtaining a copy of the judgement despite requesting the same timely, reference was made to annexure MG2 and MG3, he submitted.

Furthermore, he submitted that, the applicants received the copy of judgement on 27/01/2023 and that they did not appeal within a time as they had to comply with Order XXXIX rule 1 of the Civil Procedure Code, Cap 33 R.E which requires the memorandum of appeal be accompanied with copy of the Judgement/ decree appealed from.

At the time the applicants received a copy of judgement time within which to appeal had already lapsed since 11/10/2022, thence this application for extension, he stressed. The applicants were required to have lodged the appeal within ninety (90) days from the date of decision but in vain for want of copy of judgement.

Upon discovery that time has lapsed the applicants spent twelve (12) days to prepare this application for extension of time. Mr. Manyama cited the case of **Damian Watson Bijinja Vs. Innocent Sangano**, Misc. Civil Application no. 30 of 2021 at page 10 of the ruling where the court considered twelve (12) days to be a reasonable time to prepare application, the decision echoes similar circumstance, he submitted. He rested the first ground for extension of time.

Submitting on the second limb on illegality, Mr Manyama submitted that this reason is reflected in paragraph 10 of the affidavit. Illegality must be apparent on the face of record. In the present case the illegality is on the

misapplication of the principle of vicarious liability. He thus finalised by stating that, the factors to be considered have been met squarely with what was stated in **Lyamuya's case**. As such, submitted that, the application qualify as the delay is not inordinate and the applicants has shown diligence in handling the case as evidenced by annexure MG2 and MG3 and prayed for the application to be granted.

Replying in opposition of the application, Mr. Mwansoko submitted that, the reasons adduced are insufficient to warrant this court extend time. Extension of time is granted discretionary by the court upon being satisfied by the reasons shown as stated by in Lyamuya's case. On top of that he argued that in the case of **Attorney General vs. Emmanuel Marangakisi and others, Civil Application no. 138 of 2019** depict as to what should constitutes good cause.

He submitted that, in the present case no 7 of 2021 was scheduled for judgement on 4/7/2022 however was delivered on 11/7/2022 in the absence of the applicants. On 29/08/2022 when the applicants wrote a letter requesting for the copy of judgement it was eighteen (18) days already lapsed. The applicants did not explain how he spend the eighteen (18) days before writing a letter dated 29/07/2022. To cement his submission, he cited the case of **Rose Monica Ongara vs. Azania Bank**

Limited, Civil Appeal no. 10 of 2022 at page 7 of the judgement, he submitted that it is more than six months from the date of the judgement the applicants failed to file anything. The judgement purported to have been issued by the court is not certified that it was issued to the applicants on 27/01/2023.

Further, there is no letter from the court communicated to the applicants that the judgement was ready for collection and that the applicants really collected the judgement on the said date.

As to illegality as ground for extension of time, Mr Mwansoko referred to the case of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference no. 13 of 2019 where it was held that issue of illegality in the extension of time should only base on those touching jurisdiction, right to be heard or time barred. As such, he submitted that, issue of illegality is therefore a non-starter. The point of law must be clear and apparent on the face of record. In closing his submission, he stated that, the application lacks merit and prayed for the court to dismiss the application.

By way of rejoinder Mr. Manyama reiterated his submission in chief. Further stated that, the applicant failed to account for eighteen (18) days

from the date of delivery of judgement is uncalled for as the applicant is only required to account for the delayed days not otherwise.

He finally prayed for an application to be granted as sought.

Having considered the rival submissions by both counsels for the parties, the only issue calling for my determination is whether the applicants have been able to advance good cause to warrant extension of time.

It is a well-established principle of the law that, extension of time is only granted upon good cause being shown. Section 14(1) of the Law of Limitation Act Cap. 89 R.E. 2019 gives discretionary powers to the Court to extend time upon sufficient or good cause.

As there is no universal definition of the term sufficient or good cause, the existence or otherwise of the good cause, courts have been established numerous factors to be considered.

These include, **the lengthy of delay** (whether the delay is inordinate); whether the applicant has **accounted for all the period of delay**, whether the applicant has **demonstrated diligence and not apathy, negligence or sloppiness** in prosecution of the action; and **existence of a point of law** of sufficient importance such as the **illegality** of the decision sought to be challenged (See **Lyamuya**

Construction Company Limited Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania (supra), Zahara Kavindi and Another v Juma Swalehe & Others, Civil Application no. 4/5 of 2017 (CAT at Mwanza) (unreported).

In the instant application the judgment sought to be challenged was delivered on 11/07/2022 whereas this application was lodged 13/02/2023. Being a delay of almost seven months.

As stated above, the delay is for a period of seven months counted from 11/07/2022 when the impugned decision was delivered to 13/02/2023 when this application was filed. In my settled view, this is an inordinate delay unless good cause is given. The applicants gave two reasons as ground for delay. These are; **one**, that the delay was due none delivery of a copy of the judgment to the applicants timely and **two**, is illegality on part of the impugned decision.

Regarding the first ground for delay, the impugned decision was delivered on 11/07/2022. The applicants averred that, on different dates, they wrote letters to the court requesting to be supplied with the copy of judgement. The dates are; 14/09/2022, 6/10/2022 and 31/10/2022 appended to the application as MG2 and MG3.

Further, in the affidavit the applicants stated that, they were supplied with the copy of judgment and decree on 23/01/2023. However, there was no evidence appended to affidavit substantiating the fact that, they were indeed supplied with the decision on respective date. Such evidence was crucial given the fact that, the impugned judgment indicates that, it was signed and stamped on 11/07/2022. Applicants were expected to produce evidence that the decision was supplied to them on 23/01/2023. Further, there was no letter from the court to the applicants that judgement was ready for collected and they did so on the said date. The absence of such vital evidence, withholding such piece of evidence by the applicants did really deprive the court and respondents to ascertain and consider that the delay was with sufficient or good cause relying on the same.

In absence of concrete evidence to support such vital fact, in my view, denied both the court and respondents right to know when really the applicants were supplied with copy of judgement as there was no letter from court addressed to the applicants that the judgment was ready and collected on the stated date. Consequently, ground one for delay lacks merits.

Turning to the second ground of illegality, in paragraph 10, the applicants stated that, the judgement in Civil case no. 7 of 2021 is married with illegality on the face whereby the trial court misapplied the principles of

vicarious liability against the 2nd defendant. Illegality being among the factors to be considered in application for extension of time has been discussed in plethora of authorities; see the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 387, **Arunaben Chaggan Mistry vs. Naushad and others**, Civil Application no. 6 of 2006 CAT at Arusha (unreported) **Lyamuya Construction Company Limited** (supra).

In the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (supra) it was stated;

*The Court... emphasized that such point of law, **must be that of sufficient importance** and I would add that **it must also 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**.*

Similarly, in the case of **Arunaben Chaggan Mistry** (supra) the court emphasised the ground of illegality must be such a point of law that is of sufficient importance and apparent on the face of record such as the question of jurisdiction.

In my view and based on the long-standing authorities of this court and court of appeal, for illegality to be good cause, thence, be accommodated,

it must be; **one**, apparent and **two**, the ones touching jurisdiction, time limit, res judicata, locus standi and denial of right to be heard.

This is also echoed by the decision in the case of **Charles Richard Kombe (supra)**, where the court of appeal after defining the word illegality came to the conclusion as I hereby quote;

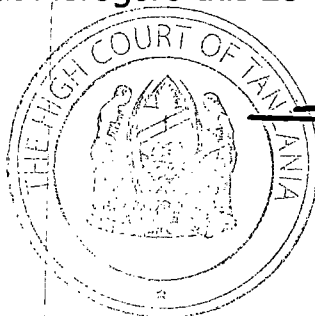
*From the above decisions, it is our conclusion that for a decision to be attacked on ground of illegality, one has to successfully argue that the court **acted illegally for want of jurisdiction**, or for **denial of right to be heard** or that **the matter was time barred**.*

In view thereof, this ground of illegality do not qualify to be good cause for extension of time based on the above legal principles. I thus reject it.

In the upshot, I find the application devoid of merits for want of sufficient or good cause. Consequently, I hereby dismiss it with costs.

IT IS SO ORDERED.

Dated at Morogoro this 28th April, 2023.




G. P. MALATA

JUDGE

28/04/2022