

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**MISC. CIVIL APPLICATION NO. 20 OF 2022**  
*(Originating from Execution No. 31 of 2021 of the High Court)*

**ALPHONCE MAZIKU MASELE.....APPLICANT**

***VERSUS***

**ACCESS BANK TANZANIA LIMITED.....RESPONDENT**

**RULING**

*31<sup>st</sup> & 31<sup>st</sup> May, 2023*

***Kilekamajenga, J.***

The applicant appeared before this court seeking extension of time to file notice to approach the Court of Appeal of Tanzania. The application was made under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 RE 2019 and any other enabling provision of the law. The counsel for the applicant, the learned advocate, Mr. Andrew Innocent Luhigo, swore an affidavit to accompany the application. When the application came for hearing, the respondent was absent despite being fully served with the summons. As a result, the court ordered the matter to proceed for hearing in absence of the respondent. The learned counsel for the applicant, Mr. Andrew Luhigo informed the court that, the reasons for the delay are stated on the second to eleventh paragraph of the applicant's affidavit. Furthermore, the applicant has accounted for the delay on the eleventh paragraph of the affidavit. Also, the intended appeal to the Court of Appeal touches issues of illegality in execution No. 31 of 2021. In his view, the applicant



has not slept in his rights; he has acted promptly in filing the instant application. The counsel urged the court to allow the application albeit without costs because the application is uncontested.

It is apposite at this stage to determine whether there are good reasons to warrant extension of time. The brief facts of the case are as follows; Lucy Madembwe Masele lost the case against the respondent. Thereafter, there was no appeal until the respondent filed Execution No. 31 of 2021 before the Deputy Registrar of the High Court at Mwanza. In the application for execution, the applicant, who was not a party in the original case, was joined. The applicant was dissatisfied with the decision in Execution No. 31 of 2021 hence filed Land Reference No. 02 of 2022 before this court. Based on a point of preliminary objection, the said reference was declared incompetent and was consequently struck out on 09<sup>th</sup> September 2022. On 28<sup>th</sup> December 2022, the applicant lodged the instant application.

Having the facts leading to this application, I am aware, extension of time is the discretion of this court which must be exercised where the applicant has demonstrated good reason to warrant the court to grant. This position is clearly stated in the cases of **Tanga Cement Co. v. Jummanne Masangwa and Another**, Civil Application No. 6 of 2001 (unreported); **Sospter Lulenga v.**

**Republic**, Criminal Appeal No. 107 of 2006, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic**, Criminal Appeal No. 130 of 2003, Court of Appeal of Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others** [1973] EA 207.

There is no exhaustive definition of sufficient reason, hence the court has to gauge each reason depending on the circumstances of each case. In the case of **Seif Store Limited v. Zulfikar H. Karim**, Civil Application No. 181 of 2013 (unreported), the Court of Appeal of Tanzania stated that:

*"The interpretation of what constitutes good cause is entirely left to the discretion of the court, a subjective approach. However, categories of what constitutes a good cause are never closed."*

It has been an established principle of the law that where there is an allegation of illegality, the court must grant extension of time for the appellate court to correct the record. This principle of the law is stated in many cases including the case of **Principal Secretary, Ministry of Defence and National Service Versus Devram P. Valambia** [1992] TLR 185, where the Court of Appeal of Tanzania stated that:-

*"We think that where, as here, the point of law at issue is the illegality of or otherwise of the decision being challenged, that is of sufficient reason" Within the meaning of Rule 8 of the*

*Rules for extension of time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand...in our view when the point at issue is one challenging illegality of the decision being challenged, the court has a duty even if it means extending the time for the purpose, to ascertain the point and, if the alleged be established, to take appropriate measures to put the matter and the record right."*

In the case of **VIP Engineering and Marketing Limited v. Citibank (T) LTD**, Consolidated Civil Reference Nos. 6, 7 and 8 of 2006 (unreported), the Court of Appeal of Tanzania emphasized further that:

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes 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."*

See also, the case of **Veronica Fubile v. National Insurance Corporation and Three Others**, Civil Application No. 168 of 2008 (unreported); **Citibank (T) Limited v. TTCL and Others**, Civil Application No. 97 of 2003 (Unreported); **William Malaba Butabutemi v. The Republic**, Criminal Application No. 5 of 2005 (unreported); **National Insurance Corporation of (T) LTD v. Shengena Limited**, Civil Application No. 63 of 2011 (unreported).

However, in the case of **Tanzania Cigarette Company (TCC) v. Hassan Marua**, Civil Appeal No. 49/01 of 2018, the Court of Appeal has gone further directing that:

*"It is not every claim of illegality that be found to be a good cause, the illegality must be apparent."*

The Honourable Court of Appeal went further expanding the jurisprudence on illegality in the case of **Charles Richard Kombe v Kinondoni Municipal Council**, Civil Reference No.13 of 2019, CAT at Dar es salaam (unreported) thus:

*"...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."*

While referring to an Indian case of **Chunila Dahyabhai v. Dharamshi Nanji and Others**, AIR 1969 Guj 213 (1969) GLR 734, the Court of Appeal of Tanzania was persuaded with the principle stated there in thus:


*"...the words 'illegality' and 'material irregularity' do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not errors of either law or fact after the formalities which the law prescribes have been complied with."*

In the case of **Charles Richard Kombe** (*supra*), the Court of Appeal of Tanzania went on emphasizing that:

*"It is clear from these observations that a mere error of law in the exercise of jurisdiction is not enough."*

In the application at hand, the fact that applicant was not a party in the original case that led to the Execution No. 31 of 2021 may be an apparent illegality to warrant extension of time. I find the applicant to have advanced sufficient cause or good reason for extension of time. I allow the application and grant 30 days to the applicant to file the intended notice. No order as to costs. It is so ordered.

**DATED** at **Mwanza** this 31<sup>st</sup> day of May, 2023



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**31/05/2023**



**Court:**

Ruling delivered this 31<sup>st</sup> May 2023 in the presence of the counsel for the applicant, Mr. Andrew Luhigo. Right of appeal explained.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**31/05/2023**

