

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR-ES-SALAAM SUB-REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 314 OF 2022
(Originating from civil Appeal No.276 of 2020)

ANSILA KIKINGO.....APPLICANT

VERSUS

KENNEDY KUNAMBI.....RESPONDENT

RULING

S.M. MAGHIMBI, J:

The current application was lodged under the provisions of Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019. The applicant is moving this honourable Court to grant her extension of time within which she may file notice of appeal to appeal to the Court of Appeal of Tanzania against the decision of this Court in Civil Appeal No. 276 of 2020 dated 10th December 2021 (Honourable I.K. Banzi, Judge). In the said decision, this court quashed and set aside the judgment and decree of the District Court of Kinondoni in Civil Appeal No. 45 of 2020 and upheld the decision of Sinza Primary Court in Civil Case No. 392 of 2019. This Application has been taken at the

instance of Hamza & Co. Advocate and is supported by the ground set forth in the affidavit of Ms. Ansila Kakingo the Applicant herein.

The gist of this application was that the Applicant herein was aggrieved by the decision of District Court in Civil Appeal No. 45 of 2020 which the first appellate Court found that the Applicant herein had deceived the Respondent herein and thus caused him to believe that he was the biological father of her child and relying on that deception, the Respondent herein incurred costs by providing maintenance to the Applicant herein, likewise she caused the Respondent to incur costs for DNA.

Aggrieved by the said decision, the respondent herein appealed to this Court vide (PC) Civil Appeal No. 276/2020 whereby the Court quashed and set aside the decision of Kinondoni District Court in Civil Appeal No. 45 of 2020 which upheld the trial Court's decision in Civil Case No. 392 of 2019. Aggrieved by the decision of this court, the applicant seeks to challenge it in the Court of Appeal. She is however out of time to lodge an application hence the current application moving the court to extend time to file a notice of appeal to the Court of Appeal of Tanzania on the ground of illegality.

At the hearing of this application, the Applicant enjoyed the service of learned counsel Mr. M.A. Senguji while the Respondent was unrepresented and appeared in person. By the consent of the parties, the application was heard by way of written submissions.

In his submissions supporting his application, Mr. Senguji established that in paragraph 14 of the affidavit, the Applicant has raised three illegalities which are apparent on the face of record of the impugned judgment of the High Court. He submitted that these illegalities are; admission of electronic evidence without establishing its source, illegality in respect of a woman to conceive within a month and deliver a complete child, and wrong interpretation of the marriage Act.

He further submitted that the admission of electronic evidence require authenticity and the first appellate Court erred by admitting the financial statement of tigo pesa account in order to substantiate the Respondent herein. That his claim was contrary to the law because it required an expert to testify when digital evidence was involved a computer forensic expert. To buttress his submission, he cited the book of **Peter Stravro Ulakis & Mark Stamp** which require expert to assure the Court that digital evidence presented before it is

authenticity. The Applicant alleged that from the record there is no point shown that the computer forensic expert's testimony regarding tigo pesa account were authentic. The Applicant went on to submit that since the evidence tendered to prove the special damages awarded was not ascertained with clarity then the High Court was wrong to allow the appeal. He supported his line of argument by citing the case of; **Vikoba Freight Co. Limited Vs Emirates Shipping Agencies (T) Ltd & Emirate Shipping Line, Civil Appeal No. 12 of 2019** which the Court held that specific damages must specifically be pleaded and strictly proved.

Mr. Senguji submitted further that the other illegality was shown at paragraph 14 of the affidavit in respect of a woman to conceive within a month and deliver a complete child. And that there is a wrong interpretation of Law of Marriage Act because there is nowhere in evidence where it was indicated that the Respondent herein promised the Applicant to marry her.

In reply, the Respondent submitted that principle governed the Court to grant extension time was elaborated in the case of; **Lyamuya Construction Company Ltd Vs Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil**

Application No.2 of 2010, CAT at Arusha (unreported). That in the said case, some guidelines were provided for including the requirement to account on each day of delay, if the Court feel that there is existence of point of the law of sufficient importance, and illegality of the decision sought to be challenged. He argued that the Applicant herein failed to meet any of them.

The Respondent went on to submit that the alleged illegality by the Applicant to the effect that there was no expert witness from TCRA is an afterthought because it was never objected during the trial. To buttress is argument cited the case of; **Nyerere Nyaugue Vs the Republic, Criminal Appeal No. 67 of 2010, CAT.**

The Respondent submitted further that the issue of the Applicant to conceive and delivered within a month is not point of illegality which warrant the attention of the Court of Appeal. On the issue of wrong interpretation of the law of marriage, he argued that if you go through the judgment of the High Court, there is nowhere this point featured pointing out that it is trite law that, matters not raised and decided at the trial Court cannot be raised at the appellate Court. He cited the case of; **Shedrack William Vs the Republic Appeal No. 292 of 2019, CAT at Shinyanga.**

The Respondent submitted that there is no any point of illegalities advanced in the Applicant's affidavit because in order for one to plead illegalities three conditions must exist One, the Court acted illegality for want of jurisdiction, or for denial of right to be heard or, that the matter was time barred. To support his point cited the case of; **Charles Richard Kombe vs Kinondoni Municipal Council, Civil Reference No. 13 of 2019, CAT at Dar –es Salaam (unreported)**

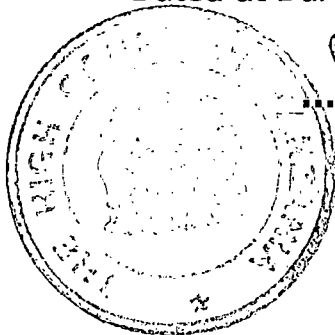
I have read the submissions of both parties, the issue is where the applicant has advanced sufficient reasons for the delay. It is the principle of the law that the grant of such application is discretionary upon the court being satisfied that there are sufficient grounds to extend time. As for the records of this application, and having revisited the Applicant's affidavit, I didn't see anywhere that she has accounted for each day of her delay to file notice.

It is apparent that Mr. Senguji consumed most of his written submissions to argue on an alleged illegality which to me, it is not a pure point of illegality on the face of records but rather, it is something which need long drawn process to get to the bottom of it. Evidence by his lengthy submissions and references, the issue he raised are more

of factual and evidential issues which do not qualify to be points of illegality. More so important, even if what is argued by him is a point of illegality, he was still duty bound to account for the delay to even go through the documents and find the alleged illegality. The applicant did not plead any delay in being supplied with the copies hence there is no justification as to why the delay should be the sole reason to extend time without explaining the reason for the time taken to even point out the illegality.

On those findings, I must therefore conclude that the Applicant has failed to convince me that there is point of law of sufficient importance, involved in the intended appeal, to warrant and extension of time. Since no reason for the delay was even mentioned, I find no merits in this application. It is for those reasons that I dismiss this application with costs.

Dated at Dar es Salaam this 08th day of May 2023.



A handwritten signature in black ink, appearing to be "S.M. Maghimbi", written over a horizontal dotted line.

S.M.MAGHIMBI
JUDGE

