

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

MISC. LAND APPLICATION NO. 26697 OF 2023
(Originating from Land Case No. 18 of 2017)

JACKSON DANIEL VAROYA.....APPLICANT

VERSUS

GETRUDE KIGANJA.....1ST RESPONDENT

PERPETUA MAHATI KIGANJA.....2ND RESPONDENT

DINA ONYANGO (Next friend of Diana Kiganja and Teresa

Kiganja.....3RD RESPONDENT

KIGANJA WAMBURA.....4TH RESPONDENT

YUSUFU RASHID KAZI.....5TH RESPONDENT

RULING

09th April & 25th April, 2024.

Kilekamajenga, J.

The applicant approached this court seeking the following orders:

- 1. That, this Honourable Court be pleased to extend time within which the applicant can lodge a notice of appeal with a view to appeal to the Court of Appeal of Tanzania against the decision of the High Court in Land Case No. 18 of 2017 made on 23/10/2020.*
- 2. That, this Honourable Court be pleased to extend time within which the applicant can lodge a letter requesting for copies of judgment, decree, proceedings and exhibits with a view to appeal to the Court of Appeal of Tanzania against the decision of the High Court in Land Case No. 18 of 2017 made on 23/10/2020.*
- 3. That, costs of this application be provided for.*



4. Any other relief(s) that this court may deem fit and just to grant.

The application is made by way of chamber summons supported with an affidavit deposed by the applicant. The applicant made the application under section 11(1) of the Appellate Jurisdiction Act, Cap. 141, RE 2019 and any other enabling provisions of the law.

In defending the application, the learned advocate, Mr. Tuguta appeared for the applicant whereas the first respondent appeared in person and also represented the second and third respondents; the fourth respondent was present in person. The fifth respondent was absent despite being dully served with the summons to appear. The court ordered the application to proceed in the absence of the fifth respondent. Mr. Tuguta for the applicant informed the court that, the applicant intends to challenge the decision of this Court which was delivered in Land Case No. 18 of 2017. He prayed for the affidavit to be adopted to form part of his submission. He further argued that, according to section 11(1) of the Appellate Jurisdiction Act, this court has power to extend time for the applicant to file notice of appeal in order to approach the Court of Appeal of Tanzania. The discretion granted to this court may be exercised to extend time where the applicant advances sufficient cause for the delay. In the affidavit, at the 13th paragraph, the applicant has stated the reasons for the extension of time. The counsel told the

court that, there is an illegality in this matter which should not be left in the records without correction.

One of the illegalities is that, the Registrar of Titles was not joined in this matter. Second, the exhibits were admitted by this court in contravention of the law. Based on these two illegalities, the counsel found reason to apply for extension of time in order to approach the Court of Appeal for justice. He supported his stance with the case of **Tropical Air (TZ) Limited v. Godson Eliona Moshi**, Civil Application No. 9 of 2017, CAT at Arusha at page 10, where the Court of Appeal listed factors which may warrant extension of time. One of those factors is the existence of illegality on record of the court. Where there is an illegality, it is a sufficient cause for extension of time. The counsel prayed for the application be granted.

Mr. Tuguta further argued that, the initial notice of appeal was struck out on technical reasons hence the applicant was not negligent in pursuing his rights. Due to the technical reasons, the applicant is now justified to appeal to the Court of Appeal of Tanzania if extension of time is granted. The counsel supported his argument with the case of **Kabdeco v. Wetcu Limited**, Civil Application No. 526/11 of 2017 at page 12-13 where the Court of Appeal stated among other things that, where there is a technical delay, the court may extend time for the applicant to appeal to the Court of Appeal of Tanzania.

In response, the first respondent objected the application arguing that the applicant failed to take prompt action after the decision of this court. The applicant had no reason to appeal to the Court of Appeal of Tanzania. On the other hand, the fourth respondent did not object the application. Thereafter, there was no rejoinder.

In determining whether this application has merit, this court is obliged to determine if the applicant has adduced sufficient reason to warrant this court to exercise its discretionary powers. It is a long established principle of the law that, in granting extension of time the court has discretionary powers to do so if the applicant has given sufficient cause. This stand has been reiterated in a plethora of Court of Appeal decisions such as **Lyamuya Construction Company Limited v. Board of registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Tanga Cement Company Ltd v. Jumanne D. Masangwa and Amos A. Malwanda**, Civil Application No. 2 of 2013, **Mumello v. Bank of Tanzania** [2006] TLR 227.

In this application, the counsel for the applicant alleged illegality as one of the reasons for the extension of time. This court, however, has no power to venture into the details of the illegality because doing so would prejudice the appellate court. Nonetheless, the alleged illegality must be on the face of the record and not

to be drawn from a long argument. In the case of **Omari R. Ibrahim vs Ndege Commercial Services LTD**, Civil Application No. 83 of 2020, the court quoted the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (*supra*) that: -

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA 'S case, 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 there 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.

Without going into the details, I subscribe to the counsel's submission that an alleged illegality is one of the reasons to warrant extension of time. In the case of **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and the Liquidator of TRI- Telecommunications (T) Limited v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported), the Court stated that:

"We have already accepted it as established law in this country that where the point of law at issue is illegality or otherwise of the decision being challenged, that by itself constitute 'sufficient reason' within the meaning of rule 8 of the Rules for extending time.... As the point of law at issue in these proceedings is the illegality or otherwise of the decision of the High Court annulling the respondent's debenture with Tri-telecommunications (Tanzania) Ltd, then this point constitutes 'sufficient reason' ... for extending the time to file a notice of appeal and applying for leave to appeal. This is notwithstanding the fact that the respondent brought the application very belatedly..."

Moreover, the applicant's counsel sought extension of time on the reason that the applicant was technically delayed after the initial notice of appeal was struck out. On the other side, the respondents did not object the alleged technical delay. I am aware, technical delay is one of the reasons for extension of time. See the cases of **Salvand K.A Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference No. 16 of 2006; **Yara Tanzania Limited v. BD Sapriya & Co. Limited**, Civil Application No. 498/16 of 2016; **Emmanuel Rurihafi & Another v. Janas Mrema**, Civil Appeal No. 314 of 2019.

In view of the advanced reasons for the delay, I find the applicant has good reasons to warrant extension of time. I hereby allow the application and allow the applicant to file notice to approach the Court of Appeal of Tanzania. I also extend time for the applicant to lodge a letter requesting copies of judgment, decree, proceedings and exhibits in order to appeal to the Court of Appeal of Tanzania. Costs of this application shall follow in the course.

DATED at **Mwanza** this 25th Day of April, 2024.



Ntemi N. Kilekamajenga.
JUDGE
25/04/2024



Court:

Ruling delivered this 25th April, 2024 in the presence of the counsel for the applicant, Mr. Tuguta and the 1st respondent who is also representing the 2nd and 3rd respondent and also in the presence of the 4th respondent is present in person but in the absence of the 5th respondent.



Ntemi N. Kilekamajenga.

JUDGE

25/04/2024

