

TANZANIA / JUDGMENT

Charles Francis vs Republic

COURT
TANZLIIDECIDED
15 November 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (BUKOB A SUB-REGISTRY) AT BUKOB A PC CIVL APPEAL NO. 9663 OF 2024 (Arising from Misc. Civil Application No. 17 of 2023 District Court of Muieba and Originating from Civil Case No. 11 of 2020 Muieba Urban Primary Court) CHARLES FRANCIS..... APPELLANT VERSUS DAICKOLA JULIUS..... RESPONDENT

JUDGMENT

12th and 15th November, 2024 BANZI, J.: The appellant has appealed to this Court against the decision of Muieba District Court that dismissed his application for extension of time to appeal against the decision of Muieba Urban Primary Court. In a nutshell, the appellant and the respondent were husband and wife who contracted customary marriage in 2006. In their union, they were blessed with three children. However, their anticipation to live together until death do them apart could not be fulfilled following the endless quarrels between them. They tried to look for reconciliation from various places but all proved futile. With such endless quarrels and unproductive reconciliations, the respondent, according to her evidence, gave up, and decided to Page 1 of 11 approach Marriage Conciliation Board for Muleba (the Board). Efforts to reconcile the couple proved futile after the appellant had failed to show up before the Board. Thereafter, the Board sent the respondent to Muleba Urban Primary Court (the trial court) and upon fulfilling preliminary requirements, Matrimonial Cause No. 11 of 2020 was opened. At the hearing, each party gave its evidence proving and disproving brokage of the marriage irreparably. After hearing both parties, in its decision delivered on 25/02/2021, the trial court was satisfied that, the marriage between the parties was broken down beyond repair. Hence, the marriage was dissolved and the trial court divided the matrimonial properties among the parties. Thereafter, no appeal was preferred by either party. However, on 15th December, 2023 the appellant applied before Muleba District Court seeking for extension of time to appeal against the findings of the trial court. In his affidavit, the appellant averred that, he was not supplied with the copy of the decision until 06/10/2023. He also, contended that, there was illegality as the matter was not first reconciled by the Board. He further contended that, some of the properties distributed by the trial court were not matrimonial properties. After hearing the parties, the District Court found that, the appellant had not advanced sufficient reasons to warrant the court Page 2 of 11 to extend the time for him to appeal out of time. His application was dismissed hence, this appeal containing two grounds to wit:

1. That the Senior Resident Magistrate erred in its finding by discussing an issue/ground of account for days of delay that was not raised by the Appiicant/Appeiiant in his affidavit and ruled not to grant the leave to appeal out of time.
2. That the Senior Resident Magistrate erred in law for failure to consider that illegality of the decision of the trial court by itself constitutes sufficient reason for extension of time. At the hearing of this appeal, Mr. Fumbuka Ngotolwa, learned Advocate appeared for the appellant whereas, the respondent enjoyed the legal services of Mr. Abel Rugambwa, learned Advocate. In his submission, Mr. Ngotolwa apart from adopting his grounds of appeal, he contended that, the District Court erred for not granting extension of time to the appellant on the reason that, he had failed to account for each day of the delay while there was a ground of illegality that was raised by the appellant under paragraphs 3, 4 and 5 of his affidavit. He went on stating that, the trial court had no jurisdiction to determine that matter because the parties did not attend the Board as directed by section 104 of the Law of Page 3 of 11 Marriage Act [Cap. 29 R.E. 2019] (the LMA). According to him, the appellant was not called before the Board as there was no proof to that effect. Thus, there was no reconciliation which ousted the jurisdiction of the trial court to try the case. In his view, the appellant managed to establish the ground of illegality which is a sufficient reason for extension of time regardless the fact that, he had failed to account for each day of the delay. He supported his argument with the case of Juto Ally v. Lukas Komba and Another (Civil Appeal No. 484 of 2019) [2020] TZCA 354. He concluded with a prayer for the appeal to be allowed by granting the appellant extension time so that he can file the appeal before the District Court for the alleged illegality to be discussed and determined. In reply, Mr. Rugambwa argued that, though the issue of account for each day of the delay was not discussed before the District Court, since the appellant delayed for two years and eight months, he was supposed to state the reasons of the delay for all that period instead of relying on the ground of illegality only. That is why the District Court discussed about the appellant's failure to account for days of delay. In his view, it was not enough to discuss the issue of illegality without accounting for each day of the delay. Hence it is not correct to say that, illegality can be the only reason for Page 4 of 11 extension of time without stating the reasons for the delay. To support his argument, Mr. Rugambwa cited the case of James Rugakingira v. Julitha Lutayuga Rugakingira (Misc. Land Application No. 9268 of 2024) [2024] TZHC 8707. Mr. Rugambwa further contended that, the appellant was summoned before the Board but he refused to attend. Therefore, section 101 of the LMA gives exception for matters to be instituted without being reconciled at the Board and one of the reasons being where the respondent has been required to appear before the Board and has wilfully failed to attend. According to him, the appeal has no merit and it should be dismissed. In a brief rejoinder, Mr. Ngotolwa insisted that, in the case of Juto Ally v. Lukas Komba and Another {supra} it was emphasised that, illegality is a sufficient ground for extension of time. He added that, the case of James Rugakingira v. Julitha Lutayuga Rugakingira {supra} is not binding as it is the decision of this Court. According to him, the factors establishing good or sufficient cause are not expected to be applied cumulatively but rather, one ground can be

sufficient. Responding to the argument raised by Mr. Rugambwa that the appellant wilfully failed to attend at the Board, Mr. Ngotolwa stated that, section 101 of the LMA is not applicable in this case because there is nothing to establish that, the Page 5 of 11 appellant neglected to attend at the Board. He insisted that, there is illegality and pray to be given time so that they can discuss the alleged illegality in the appeal. Having considered the records of the lower courts and the rival submissions from both sides, the issue for determination is whether the appeal has merit. According to the records, it is clear that, the decision of the Primary Court was delivered on 25/02/2021 and the application for extension of time was filed on 15/12/2023, almost two years and ten months. In his application, the appellant raised a ground of illegality as the reason seeking for extension of time. In his submission before the District Court, Mr. Ngotolwa discussed about the illegality that was committed by Primary Court for adjudicating the matter that had not passed through the Board. But in his response to the ground of illegality raised by Mr. Ngotolwa, Mr. Rugambwa insisted that, the appellant was supposed to account for the delay rather than relying on illegality. In her findings, though the learned magistrate cited various cases acknowledging that illegality is a sufficient reason for extension of time, at the end, she denied the application on the reason that, the appellant had failed to account for days of delay as allowing Page 6 of 11 the application would be allowing the parties to come to court whenever they wish to do so. Notably, it is a principle of law that, granting extension of time is a discretionary power of the court, though ought to be exercised judiciously. There are various factors be considered before granting extension of time. In the case of Asha Juma Mansoor and Others vs John Ashery Mbogomi (Civil Application 192 of 2020) [2021] TZCA 379 it was stated that: "...there are factors which the Court considers when determining this, as introduced by various decisions of this Court. These factors though not exhaustive are such as; the length of the delay; the reasons for the delay; the degree of prejudice the respondent stands to suffer if time is extended; whether the applicant was diligent; and whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged. "[Emphasis added]. See also the case of Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4. Page 7 of 11 Now, the only issue for determination is whether the appellant had established sufficient cause to be granted extension of time. It is clear from the record and submissions of both parties that, there is rival argument on whether parties have attended the Board and reconciled in accordance with law. The outcome of the rival argument, will in one way or another end up with a question of jurisdiction of the trial court following violation of sections 101 and 104 of the LMA. It is a principle of law that, where the ground of illegality has been established, even though the applicant has failed to account for the delay, the court has to extend the time so that the raised illegality may be determined in the appeal. See the cases of Convergence Wireless Networks (Mauritius) Limited and 3 Others v. Wia Group Limited and 2 Others [2016] TLR 153 (CA), Principal Secretary, Ministry of Defence; National Service v. Devram Valambhia [1992] TLR 185 and Aruben Chaggan Mistry v. Naushad Mohamed Hussein and 3 Others Civil Application No. 6 of 2016 CAT (unreported). In the case of Aruben Chaggan Mistry it was stated that: "When there is an

allegation of illegality, it is important to give an opportunity to the party making such allegation to have the issue considered." Page 8 of 11 From the position of the law above, it is clear that, once there is allegation of illegality, that in itself suffices to grant extension of time. It is undisputed that, as contended by learned counsel for the respondent, the appellant has failed to account for each day of the delay. However, as stated above, a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay. Besides, as correctly submitted by learned counsel for the appellant, the factors mentioned above were not meant to be used cumulatively but rather, each can be used independently depending on circumstances of a particular case. Apart from that, I had opportunity of perusing the cited case of *James Rugakingira v. Julitha Lutayuga Rugakingira*. In my view, the circumstances of that case are distinguishable to the matter at hand. In that case, the records showed that the applicant was supplied with the copy of judgment just 12 days after the delivery of judgment but he kept quiet and emerged to apply for extension of time seven years later alleging for illegality which he did not even demonstrate its existence. However, in our case, though the judgment of the Primary Court was delivered on 25/02/2021, the Page 9 of 11 appellant claimed to be supplied with the copy on 6/10/2023 and filed his application on 15/12/2023 that is one month and few days upon being supplied with the copies of the judgment. Observably, this contention was neither disputed by the respondent nor her advocate which indicates that, that was the date the copy of the trial court was supplied to him. Even though the proceedings and copies of judgment are not requirement in the appeal process, but they are necessary documents to be availed to the party so as to assist him in drawing his appeal. Besides, unlike in *James Rugakingira's* case where the alleged illegality was not demonstrated, in our case, the alleged illegality touches the issue of jurisdiction of court which as a matter of principle, can be raised at any stage as it was stated in the case of *Tanzania-China Friendship Textile Co. Ltd v. Our lady of the Usambara Sisters* [2006] TLR 70. That being the case, it is my findings that, after the appellant had raised the issue of illegality, it was sufficient for the court to grant such application so that the matter may be determined on merit. In that regard, by refusing to grant extension of time after accepting that illegality is a sufficient reason to extend time, the learned magistrate committed an error. Thus, I find the appeal with merit and I hereby allow it. The appellant is Page 10 of 11 hereby given thirty (30) days from the date of this judgment to file his appeal before the District Court of Muleba. Owing to the nature of the case, each party shall bear its own costs. It is accordingly ordered. I. K. BANZI JUDGE 15/11/2024 Delivered this 15th day of November, 2024 in the absence of the appellant and in the presence of Mr. Abel Rugambwa, learned counsel for the respondent who is also present, Hon. Audax V. Kaizilege, Judge's Law Assistant and Ms. Elizabeth Kobelo, RMA. Right of appeal duly explained. JUDGE 15/11/2024 Page 11 of 11

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/321667/source_file/4d8946a98e53446f/Charles_Francis_vs_Republic.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/charles-francis-v-daickola-julius-Extensionoftime-tanzlii-2024--6a3ea5243b1caa9129819e73

Prepared on 13 October 2026 · Esheria