

TANZANIA / JUDGMENT

# MS EQUITY FOR TANZANIA EFTA LTD VS RAMADHAN MOHAMED MUNGWE

COURT  
TANZLIIDECIDED  
16 August 2024

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

IN THE HIGH COURT OF TANZANIA DODOMA SUB REGISTRY AT DODOMA CIVIL APPEAL NO 20382 OF 2024 (Arising from Ruling of the District Court of Chamber in Miscellaneous Civil Application No. 11922 of 2024 dated 16/08/ 2024) BETWEEN M/S EQUITY FOR TANZANIA (EFTA) LTD.....APPELLANT VERSUS RAMADHANI MOHAMED MUNGWE.....RESPONDENT

## JUDGMENT

Date of the last Order: 28/10/ 2024 Date of the Judgment: 10/12/ 2024 LONGOPA, J.: The appellant and the respondent were parties to an application for extension of time before the District Court of Chemba seeking to set aside ex parte judgment and decree in Civil Case No 2 of 2022. The District Court having heard both parties on 16th August 2024 dismissed the application for extension of time with costs for being devoid of merits on account that the appellant herein failed to demonstrate a good cause of extension of time. 1|Page The appellant was dissatisfied by the whole of the ruling and drawn order of the District Court of Chemba, thus preferred an appeal on the following grounds, namely:

1. That the trial court erred in law and in facts to dismiss the applicant's application for extension of time without considering relevant legal and justice (sic!) advanced by the appellant herein during the proceedings of this case at the trial.
2. That, the trial court erred in law and fact to order the right of appeal to the High Court to be done within 30 days from the date of its ruling. The parties appeared before me on November 2024 whereas it was agreed that this appeal be disposed by the way of written submission whereas the scheduling order was issued. The appellant was ordered to file submission in chief on 11th November 2024. The respondent was ordered to file his reply submission on 25th November 2024 and rejoinder if any was to be filed on 2nd December 2024. 2|Page Until the time of composing this decision, it was only the appellant who complied with the scheduling orders as the appellant filed the submission on 10th November 2024, a day before the deadline that was on 11th November 2024. It was argued by the appellant that on the first ground, the trial Court erred in law and fact by its failure to consider all relevant legal and justice factors which would sufficiently establish good cause

for extension of time. To cement the argument the appellant reiterated that at the trial court the applicant did state that ex parte judgment was tainted with irregularities as the applicant was not properly served with summons to appear and defend the suit and pronouncing the ex parte judgment. According to the appellant having asserted the question of illegalities, it was the appellant view that anything that proceeded thereat the Court was a nullity for violating the principle in the decision of the High Court in the case of Chausiku Athuman vs Atuganile Mwaitege, Civil Appeal No. 122 of the 2007, High Court of Tanzania at Dar es Salaam (Unreported) which was cited in case of Commissioner for Lands and 2 Others vs 3|Page Johnson Leonard Mahururu, Miscellaneous Land Application No 365 of 2022 in which the Court stated that: “In ex parte proceedings failure to notify the defendant when the ex parte judgment will be delivered....denied the defendant the right to take necessary steps to protect her/his rights where the judgment is prejudicial to her/his interest.” It was argued that the appellant did rightly prefer the application for extension of time to set aside ex parte judgment before the trial court as that was the only available avenue to challenge the decision that was tainted by illegalities thus sufficient ground existed. The appellant cited the cases of TANESCO vs Mufungo Leonard Majura and 15 Others, Civil Application No 94 of 2016; and George Timothy Mwaikusa vs National Microfinance Bank Plc, Misc Application No. 41 of 2020, where it was stated that “ the fact that there is a complaint of illegality in the decision intended to be impugned...suffices to move the court to grant extension of time so that the alleged illegality can be addressed by the court.” 4|Page It was reiterated that there was serious illegality in the ex parte judgment of the trial court, such illegality was supposed to be cured by the trial court to allow the extension of time to file an application to set aside ex parte judgment but the trial court dismissed the same without giving it due consideration. On the second limb of this ground, it was stated that there was existence of technical delay which led the appellant to delay in challenging the decision. It was the appellant’s argument that the appellant filed an application for setting aside the ex parte judgment and decree on 20 th September 2022 on Civil Case No 2 of 2022 dated 2nd September 2022 and the appellant managed to get control number for necessary fees which was successful made on time. It is trite law under Rule 21( A) (1) and (2) of the Judicature and Application of Laws (Electronic) Rules, 2018 which states that document filed electronically is considered to have been properly filed soon after submitted and admitted in the system as per the principle enumerated in the case of Leticia Vedasto Ngililea T/A Letisco Supplies and 5|Page Another vs Edmund Aaron Mwasaga and 2 Others, Misc Commercial Application No 011780 of 2024 (TANZLII). It was reiterated that the appellant communicated with the Court clerk at Chemba District Court about the admission and assignment of the said case but the court informed him that the case was not found as the system was under maintenance thus prompting the filing of the application for extension of time to set aside ex parte judgment. On second ground, it was added that regarding the error of the trial Court to order the right of appeal to the High Court should done within 30 days from the trial court’s decision as the District Court was exercising the original jurisdiction. It was argued further that Part II item 2 of the Law of Limitation Act, Cap 89 R.E. 2019 provides for 45 days of appeal, it was the appellant prayer to this Court to allow this appeal in order to

cure such illegality appearing in the judgment of the trial court. I have carefully considered the submissions in line with available records on this matter. I have dispassionately considered the submission and available records in light of the two raised grounds of appeal. 6|Page For the first ground on existence of legal and justice factors for the grant of extension of time, it should be reiterated that there are important principles that govern extension of time. The first and foremost principle is that extension of time is a sole discretion of the court to grant. Second, exercise of such powers must be exercised judiciously where there is proof of existence of good cause or sufficient cause. It is certain that extension of time involves exercise of discretionary powers of the Court which must be exercised judiciously on existence of good cause on the part of the applicant. In *Shoprite Checkers Tanzania Limited vs Commissioner General of Tanzania Revenue Authority* (Civil Application No.358 of 2021) [2023] TZCA 17379 (3 July 2023) (TANZLII), at pages 5-6, the Court stated that: As per rule 10 of the Rules the extension of time is granted where the applicant has shown good cause for the delay. The good cause is determined by considering various factors, including promptness in taking action after one has learned of the delay, considering whether the 7|Page Applicant has accounted for each delayed day, and the existence of the sufficient point of law such as illegality of the decision sought to be impugned. See; *Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 [2011] TZCA 4; [03 October, 2011, TANZLII], *Ngao Godwin Losero v. Julius Mwarabu*, Civil Application No. 10 of 2015 and *Regional Manager Tanroads Kagera v. Ruaha Concrete Company Limited*, Civil Application No. 96 of 2007 all unreported. In *Lyamuya Construction* case (supra) this Court stated that: "As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: (a) The applicant must account for all the 8|Page period of delay; (b) The delay should not be inordinate;

- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged." For this court to grant extension of time there must be a good and reasonable cause in doing so. In the case of *Barclays Bank Tanzania Limited vs Phylisian Hussein Mcheni* (Civil Application 176 of 2015)

[2015] TZCA 255 (30 December 2015) (TANZLII), the Court of Appeal stated that: Under rule 10 of the Rules the Court has wide discretionary powers to extend the time for the doing of any act provided good cause has been shown. What constitutes good cause differs from case to case. This Court, in *Joel Silomba v. R., -Mbeya Criminal Application No. 5 of 2012* (unreported) held that among factors to be considered in 9|Page an application for extension of time under rule 10 of the Rules are: (a) The length of the delay; (b) The reason for the delay- whether the delay was caused or contributed by the dilatory conduct of the

applicant?; (c) Whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision sought to be challenged. In these precedents, relevant factors to be considered are stipulated. These include lengthy of delay, reason for delay that is not associated with negligence or conduct of the applicant, or existence of important legal point or illegality to be challenged in the decision. It is lucid that illegality is one of the important legal points for extension of time. However, extension of time based on illegality is not be mere assertion but upon should vivid from the face of the record. In *China Hunan Construction Engineering Group (E.A) Ltd vs Pendo Kasyamukula* (Civil Application No. 12/09 of 2021) [2024] TZCA 204 (19 March 2024) (TANZLII), at pages 11-12, the Court stated that: 10 | P a g e It is indeed settled that an illegality can, by itself, constitute a good cause for extension of time. See, among others, *Secretary, Ministry of Defence and National Service v. Devram Valambhia* (supra), and *Lyamuya Construction Co. Ltd* (supra). I gather from such authorities that a ground of illegality has to be claimed by an applicant in his affidavit; it has to be apparent on the face of the record; it must not be one that would not be discovered by a long-drawn argument or process; and it has to be a point of law of sufficient importance. In so far as the above elements of a ground of illegality are concerned, I have no doubt that they entail a showing on the part of the applicant of their existence in the averment in the affidavit in support and not merely claiming that there is an illegality. Such showing would necessarily assist, among other things, in demonstrating that the alleged ground of illegality is not a mere point of 11 | P a g e law justifying appealing on the point of law as well as demonstrating that it is of vital importance. It is not a claim of illegality that is sufficient but the applicant must demonstrate fully on such illegality to raise sufficient and important point of law. It is on record that an affidavit of the applicant before the District Court the appellant had no proper knowledge on existence of the case against it as there was no proper service of summons. It was also reiterated that sometimes in August 2022, the appellant received summons to file Written Statement within 21 days and when he appeared in court he was informed that the matter was set for judgment. Thus, according to the appellant, the ex parte judgment was pronounced on 2nd September 2022. This was contained in Paragraphs 4, 5 and 6 of the affidavit in support of the application before the trial court. This application was preferred on 23 rd May 2023. The illegality point on this application would be that the appellant was condemned unheard. In law this would be a very important legal point for extension of time. However, it is noted that the appellant did not 12 | P a g e demonstrate at all that actually the appellant was not heard in the sense that summons was not served nor he was aware of the proceedings against the appellant institution. In the settled view of this Court the appellant ought to have attached to the affidavit the summons that was stated to have been served to the appellant in August 2022 to file WSD and when approached the Court found the matter was scheduled for judgment. Second, he ought to have attached proceedings in the Civil Case No. 2 of 2022 to form part of the affidavit to demonstrated that in such proceedings there is nothing indicating that this person was served. In absence of these important aspects would make the court have nothing to rely on in finding that a good cause existed. A close scrutiny of the decision of

the trial Court, the District of Chemba at page 10 of the Judgment, the trial learned Magistrate observed that the appellant was properly served to appear and file Written Statement of Defence and there was publication of the service in Mwananchi Newspaper dated 24th May 2022 three months and a week 13 | P a g e before the ex parte judgment was made by the trial court in Civil Case No. 02 of 2022. Further, it was observed that the appellant received another summons on 3rd August 2022 on existence of such proceedings against the appellant but took no action. This was a month before an ex parte judgment was delivered. It was on all these accounts that trial court had concluded that appellant herein had not good cause to the grant of extension of time. It is lucid that illegality was not proved by the appellant herein to the satisfaction of the Court. This Court is guided by the settled principle in the case of Barretto Hauliers T. Ltd vs Josephine E. Mwanyika & Another (Civil Application No. 27/01 of 2022) [2024] TZCA 178 (13 March

2024) (TANZLII), at pages 7-8, where the Court noted: I am very aware that, where the point at issue is one alleging 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 illegality is established, to take appropriate measures to put the matter and the record straight. However, in my 14 | P a g e view, that illegality must be in relation to the impugned decision and not otherwise. Further, in the case of Njake Enterprises Limited vs Blue Rock Limited & Another (Civil Application No. 16 of 2020) [2024] TZCA 114 (23 February 2024) (TANZLII), at page 14-15, the Court of Appeal reiterated that: Nonetheless, and in the circumstances of the application pertaining, I move to consider the last ground expounded by the applicant's counsel, contending that the impugned decision of the High Court is tainted with illegalities. Much as it can be appreciated that, illegality is one of factors to be considered as good cause, the same is not an automatic right. For illegality to be considered as a good cause for extension of time, it must be apparent on the face of record. It has been held times without number that where illegality exists and is pleaded as a ground, the same as well constitute a good cause for an extension of time. However, 15 | P a g e the alleged illegality must be on the face of the record. In the case of Lyamuya Construction (supra), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows: - "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." [Emphasis added]. As the analysis by trial Court demonstrated evidently that there existed no point of illegality based on the right to be heard was established 16 | P a g e as there was sufficient evidence on record to the contrary, I am satisfied that the trial court Magistrate acted properly well within ambits of the law to dismiss this limb of reasons for extension of time. On the second limb relating to

existence of technical delay, this cannot detain this Court. This Court is in concurrence with the finding of the trial Court that no technical delay existed in this matter. The reasons are simple and straight forward that: First, the appellant had preferred for revision in the High Court of Tanzania in Civil Revision No 3 of 2022 against the ex parte decision which was determined by being struck out in October

2023. Second, the application for extension of time was filed on 23<sup>rd</sup> May 2024 which is some seven months of the striking out of the Civil Revision No 03 of 2022. The failure to account the time from October 2023 to May 2024 makes the assertion of technical delay being unmeritorious. Technical delay would confine itself to the to the period up to October 2023 when the Civil Revision No. 03 of 2022 was still pending in court's corridors. The same having struck out in October 2023 meant that from that point in time to 17 | P a g e 23<sup>rd</sup> May 2024 when the application for extension of time was filed ought to have been accounted for each day of delay. While arguing this appeal, the appellant reiterated a different line of argument that technical delay was the existence of an application to set aside the ex parte judgment that was pending before the trial Court. Appellant stated that: one, the appellant did file an application to set aside the ex parte judgment on 20<sup>th</sup> September 2022 where she managed to get control number for necessary fees and the application was made timely. Two, that the document was filed online through electronic case management system. The case of Leticia Vedasto Ngililea T/A Letisco Supplies and Another was cited to demonstrate that once a matter is submitted and admitted online it is deemed to have been dully filed under Rule 21(A) (1) and (2) of the Judicature and Application of Laws (Electronic Filing) Rules GN No 148 of 2018. Three, the appellant communicated with a court clerk of Chemba District Court who informed the appellant herein that the application cannot be found in the system since the system was on maintenance which resulted into all cases formerly filed not to be found. 18 | P a g e Thus, the appellant blamed the trial court for not considering all the strong evidence to extend time. The perusal of the record reveals that Paragraphs 7, 8 and 9 of the affidavit in support of the application to extension of time catered for the assertion. The affidavit attached an annexure that is chamber summons and affidavit dated 20<sup>th</sup> September 2022. It should be stated at this juncture that the said Chamber Summons and affidavit have nothing to indicate that the same was filed in court. It is a mere assertion without any substance. First, the appellant never demonstrated which case number nor reference number was assigned to this alleged application. Second, the appellant did not attach any copy of payment receipt nor the alleged control number that was issued to the appellant to effect payment for the application for setting aside the ex parte judgment. Third, there is nothing from the alleged court clerk to substantiate assertion regarding the electronic case management system being under maintenance and its inability to show records of already filed cases. 19 | P a g e Indeed, the assertion are mere afterthought on part of the appellant trying to substantiate that appellant did not act negligently. However, the appellant did not to so establish. It is a law that when contents of an affidavit mention another person in contentious matters in court that person must swear or affirm an affidavit to support the

assertion of the applicant. In the case of *Suzan Ng'ondo vs Anna Samwel Urassa* (Civil Application 606 of 2021) [2023] TZCA 17266 (22 May 2023) (TANZLII), at pages 6-7, the Court of Appeal stated lucidly that: The said omission, in our considered view violated the mandatory rule of evidence which requires that, in any contentious judicial proceedings, where the proof of existence of certain fact deposed in an affidavit needs evidence of the other person, that other person has to swear an affidavit to supplement the allegations of the principal deponent, in this case Mr. Kanyana. We have reiterated that principle in a number of cases, including *Benedict 20 | P a g e Kiwanga v. Principal Secretary Ministry of Health*, Civil Application No. 31 of 2000, *Franconia Investments Ltd v. TIB Development Ltd*, Civil Application No. 270/01 of 2020 and *NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd*, Civil Application No. 13 of 2002 (all unreported). For instance, in *NBC Ltd* (supra) we stated that: "...an affidavit which mentions another person is hearsay unless that other person swears as well" In the circumstances of the appeal, it was mandatory for the appellant to demonstrate before the trial court that there existed an application to set aside the ex parte judgment by having an affidavit of the court clerk on the electronic case management system misbehaving thus proving that such application existed. The failure makes the whole argument based on this line that there existed an application for setting aside the ex parte judgment thus technical delay to be not proved thus no good cause for granting the extension of time. 21 | P a g e It is settled law that a court should consider different circumstances to establish whether a good cause exists in circumstances of that particular case. For instance, in the case of *Rose Irene Mbwete vs Phoebe Martin Kyomo* (Civil Application No. 70 of 2019) [2023] TZCA 111 (10 March 2023) (TANZLII), at page 11, the Court illustratively noted that: Therefore, as a matter of general principle, it is in the discretion of the Court to grant or not to grant extension of time. However, that discretion must be exercised judiciously, according to the rules of reason and justice, and not permit private opinion or arbitrarily. The term 'good cause' has not been defined, but it can be interpreted depending on the circumstances of each case. Indeed, both limbs of existence of good cause for the granting extension of time have no iota of merits whatsoever. The trial District Court acted properly and in accordance with the law do dismiss the Miscellaneous Civil Application No. 11922 of 2024 where the appellant sought extension of time to apply for setting aside ex parte judgment dated 2nd September 22 | P a g e

2022. At this juncture, the first ground of appeal collapses for being destitute of any merits. The second ground of appeal is that the trial court erred in law and fact to order that right of appeal to the High Court to be done within 30 days from the date of its ruling and it was the appellant's prayer that this appeal be allowed to make the records of the court clear. It is on record that having dismissed the application for extension of time for lack of merits with costs, the Court informed that parties on the right of appeal. To quote, it is stated that: "COURT: Right for Appeal to the High Court of Tanzania within 30 days from the date of this ruling explained. SIGNED A.D. HAYUMA-SRM 16/08/2024." 23 | P a g e It was submitted by the appellant that having stated that appeal should be preferred within 30 days of the ruling makes the decision to be tainted by illegalities. In application for extension of time

to set aside ex parte order was an application of the nature that trial District Court of Chemba was exercising the original jurisdiction and not the appellate or revisional jurisdiction. As such, a thirty (30) days period stated in section 25 of the Magistrates Courts Act as period for appealing is not applicable to the instant appeal. In the case of the Heritage Insurance Co Tanzania Ltd vs Mary Oswald Chuwa And Others (Civil Appeal No. 7 of 2022) [2023] TZHC 15796 (17 February 2023) (TANZLII), at pages 10-11, this Court (Hon. Simfukwe, J.) observed that: As rightly submitted by the learned counsel for the appellant, the district court was exercising original jurisdiction in the said case. That being the case, then, the law applicable as envisages under section 70(1) of the Civil 24 | P a g e Procedure Code (supra) is the Civil Procedure Code since there is no any other law which provides for appeal to this court. Thus, since the applicable law is the Civil Procedure Code, then the provision which fits this matter is Item 1 Part II to the Schedule of the Law of Limitation Act which explicitly provides a time limit for an appeal under the Civil Procedure Code to be 90 days. Since the District Court was exercising its original jurisdiction then the specific law applicable is the Civil Procedure Code of which the time limit to appeal to this court is 90 days. It is clear that the time for appealing from the District Court to the High Court in circumstances where the district court was exercising original jurisdiction the period for preferring such appeal is not 30 days as it was stated in the impugned decision leading to instant appeal. Indeed, the submission by the counsel for appellant on this aspect seems to be valid. However, this court is not in concurrence with the 25 | P a g e appellant that the effect of such directive is to warrant the whole decision illegal. That is not the case. This court revisited Order XX Rules 4 and 6 of the Civil Procedure Code governing the contents of judgment and decree to find out if the aspect complained may vitiate the judgment. The provisions state that:

4. A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.
5. N/A 6.-(1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim and shall specify clearly the relief granted or other determination of the suit. These contents of the judgment and decree by extension are applicable with regard to the ruling and its attendant drawn order. The Ruling and its Drawn Order in Misc Civil Application No. 11922 of 2024 26 | P a g e dated 16th August 2024 by the District Court of Chemba contains all the required ingredients of the judgment. In the submission in support of this ground of appeal, the appellant has not stated anything with regard to a possibility of miscarriage of justice that might have resulted from the limitation of appealing within 30 days of the ruling. Otherwise, the lamentation deserves nothing but to be discarded as there is nothing on record to the prejudice of the appellant's rights. Allowing the appeal on this ground alone would amount to this Court being oblivious of two settled principles in this jurisdiction namely being tied by the technicalities in dispensation of justice enshrined in Article 107A

(2) (e) of the Constitution of the United Republic of Tanzania, Cap 2 and the overriding objective principle as provided for in Section 3A and 3B of the Civil Procedure Code, Cap 33 R.E. 2019. These principles take care of the minor aspects like the complaint by the appellant relating to time limitation for filing an appeal. 27 | P a g e On strengths of this analysis therefore, I am inclined to find out that both grounds of appeal preferred by the appellant to challenge the decision of the District Court of Chemba that declined to extend time are delinquent of merits. The appeal deserves to be dismissed in its entirety. I shall proceed to dismiss the appeal with costs. It is so ordered. DATED at DODOMA this 10th day of December 2024. E.E. LONGOPA JUDGE 10/12/2024. 28 | P a g e

### 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/323636/source\\_file/1eecbd945950aa09/MS\\_EQUITY\\_FOR\\_TANZANIA\\_EFTA\\_LTD\\_VS\\_RAMADHAN\\_MOHAMED\\_MUNGWE.pdf](https://media.tanzlii.org/media/judgment/323636/source_file/1eecbd945950aa09/MS_EQUITY_FOR_TANZANIA_EFTA_LTD_VS_RAMADHAN_MOHAMED_MUNGWE.pdf)

**CASE PAGE**              <https://chat.esheria.ai/case-law/tanzania/ms-equity-for-tanzania-efta-ltd-v-ramadhani-mohamed-mungwe-extensionoftime-tanzlii-2024--6a3ea5243b1caa912981a193>

Prepared on 14 October 2026 · Esheria