

TANZANIA / JUDGMENT

PARANTINE JEREMIAH JUDGMENT

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB REGISTRY) AT DAR ES SALAAM
CIVIL APPEAL NO. 26372 OF 2024 (Arising from Misc. Civil Application No.11938 of 2024,
Bagamoyo District Court delivered on 20th September, 2024 before Hon. B.E. MBAFU-RM)
PARATIENE GEREMEIAH..... APPELLANT VERSUS BADRI
RAMADHANI SADRI.....RESPONDENT

JUDGMENT

13th February & 27th March, 2025 MWANGA, J. Aggrieved by the decision of the District Court of Bagamoyo, at Bagamoyo in Misc. Civil Application No.11938 of 2024, which was delivered on 20th September 2024, the appellant is challenging the ruling of the district court on the following grounds: one, that the magistrate erred in law by disregarding the illegality of the trial court judgment as a ground for extension of time two, that the magistrate erred in law and fact by ruling out that the appellant failed to account for each day of delay. Three, the magistrate erred in law and fact by giving a ruling based on the respondent's arguments and disregarding the appellant's arguments. 1 Hearing of the appeal took the form of a written submission, in which the appellant appeared in person, while Mr. Peter Madaha, a learned counsel, represented the respondent. Submitting in support of the appeal, the appellant submitted that it is an established principle of the law that where there is an allegation of illegality, the court must grant an extension of time for the appellate court to correct the record. To buttress his position, he cited to the court the case of Principal Secretary, Ministry of Defence and National Service vs Devram P. Valambilia [1992] TLR 185 He submitted that the appellant, in his submission supporting application for extension of time, was able to point out the issue of illegality as one of the important reasons for him to be granted an extension of time; however, the court turned a blind eye to the said argument. While quoting the impugned judgment, he submitted that, from the look of the above reproduced decision of the trial court, it is clear that the same contains material irregularities, for the same not containing framed issues and Reasons for the decision, something contrary to the Magistrates Court (primary Courts Judgment of Court) Rules GN. No. 2 of 1988, particularly provision of Rule 3(1), which requires the trial Magistrate during the hearing of the suit to ascertain the matters/issues in dispute before composing a judgment. He submitted that the law requires a judgment of any court to be grounded on evidence properly adduced; otherwise, the purported decision becomes a nullity. It was his further argument that the impugned judgment does not contain any records of the evidence so claimed to be adduced, and

it neither contains the evidence adduced by the appellant in defence of the allegation. To him, the fact that the judgment does not contain evidence adduced is a material irregularity which needs to be corrected by the higher court, and the same cannot be rectified unless the appellant is given an extension of time to file his appeal against the said decision. It was his prayer that, this Honourable court set aside the District Court decision and grant extension of time to file appeal because a claim of illegality of the primary court decision constitutes reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay, and this is mainly because the appellate court should be given avenue to correct the illegality contained in the said judgment. In rebuttal, Mr. Madaha contended that, the Magistrate was correct to disregard illegality as alleged by the Appellant because Appellant failed to indicate illegality in the decision of the Primary court of Kerege in shauri la daawa No. 52/2023 delivered by Hon. Kayombo.J. Appellant was unable to indicate illegality exist on the face of records to stand as the ground of appeal. He stated that the Court of Appeal has provided guidelines to be followed by courts when exercising their discretionary powers in granting an extension of time. The guidelines have been stipulated in the case of Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Appeal No. 2 of 2010, CAT at Arusha on pages 5 and 6 of the judgment; "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 rule of reasons and justice, and not according to private opinion or arbitrarily". He also referred the court to the decision of the Court of Appeal in the case of Lyamuya Construction Company Limited (Supra) at Arusha, at pages 8 & 9, expounding on what illegality means. The court had this to say; "Since every party intending to appeal seek to challenge a decision either on point of law or fact, it cannot on my view, be said that in VALAMBIA's case, the Court to draw a general rule that every applicant who demonstrate that his intended appeal raises a point of law should as of right, be granted extension of time if he applies for one. The Court there emphasized that such a 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 argument or process." It was his submission, therefore, that Appellant seemed to force the existence of illegality in the decision of the trial court to waive the duty to account for each day of delay. He went on to argue that there is a distinction between illegality on the face of the records and other forms of illegality. He stated, as per the case of Lyamuya (supra), that not every illegality constitutes a ground for extension; such illegality must be evident on the face of the records, and it must be clear that it does not require an elaborate argument to be established. Such illegality is akin to the court not having jurisdiction, the matter being timely barred, etc. It was his submission, therefore, that there is no "illegality" on the face of the records established by the Applicant. He maintained that in the present Appeal, the appellant has not indicated any error apparent on the face of the record. I have carefully considered the rival submissions by the parties here and the trial records that I have scrutinized. I am in the same line of argument as the appellant that, where illegality is successfully advanced as a ground, all other factors, such as accounting for days of delay, are not measured. This position was pronounced in the case of VIP Engineering and Marketing Limited and Three Others Vs Citibank Tanzania Limited,

Consolidated Civil Reference Nos 6, 7 and 8 of 2006 CA (Unreported), where the Court of Appeal patently stated: “It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient 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”. Therefore, successful demonstration of the existence of illegality qualifies as a ground good enough to allow extension of time See also the cases of: *The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia* (supra) *Serengeti Breweries Limited v. Hector Sequeiraa*, CAT-Civil Application No.373 of 2018; (Unreported). It is also worth noting that the invocation of illegality as a ground is not without any condition precedent. The settled position is that the alleged illegality must be of sufficient importance and on the face of the record. If illegality is so unclear and would not be discovered without a long-drawn argument or process, the same fails the test or the threshold requisite for having it as a ground. 6 This principle was adumbrated in the case of *Lyamuya Construction Company Ltd vs. Board of Trustees of Young Women’s Christian Association of* (supra), where the Court of Appeal of Tanzania had the following to say: “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 Valambhia’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 record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process”. [Emphasis supplied] In this appeal, the appellant claims that the trial court’s judgment contains numerous irregularities; therefore, he has good reason to be granted an extension of time. In my unflustered view, the illegality alleged to exist is not of sufficient importance and apparent. This would require a lengthy argument to establish. It is my conviction that the same does not pass the requisite threshold for its reliance in matters of extension of time. As rightly submitted by Mr.Madaha, it is not every illegality that stands as ground for extension; such illegality must exist on the face of records, and 7 it must be clear that it does not require an elaborate argument to be established. Expounding on this point, the court of appeal in the case of *Chandrakant Jushubhai Patel vs. The Republic*; Application No.8 of 2002 (Cat - Dsm) tanzlii at page 13, where the court held that, “The line of demarcation between an error of simplicity and an error on the face of the record may sometimes be thin. It can be said of an error that it is apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established”. Guided by the above authority, it is apparent that, in the instant appeal, the appellant has failed to establish illegality as a ground for extension of time. Ultimately, this ground is dismissed for lack of merit. On the second ground, appellant submitted to the effect that the magistrate erred in law and fact by ruling out that the appellant failed to account for each day of delay. He said, from the affidavit in support the Application for extension of time the Applicant states that the reason for delay to file the Petition of Appeal was not caused by applicant’s negligence but the fact that the applicant was not supplied with a copy of Judgment on time to assist him in preparing a Petition of Appeal. He said, a glance unto the applicant’s affidavit and its annexure verifying the cause 8 for delay support the alleged complaints date the said judgment was delivered and the said stance

was supported by the respondent in Paragraph 6 of his Counter affidavit where the respondent states that the Applicant was supplied with a copy of the judgment on 8th May 2024. He argued that, in his submission, the Appellant accounted for the days of delay and argued that the delay was caused by the court itself as the copy of the judgment was not in the hands of the applicant on the date on which he was supposed to file the Appeal. The applicant has been able to account for each day of delay from May 2, 2024, to May 5, 2024, which totals six days of delay. For the entire six-day period, the judgment was not supplied to the Applicant, yet he was unable to file the Appeal. He argued that, on 8th May 2024 when the Appellant received the copy of judgment he had to consult an Advocate who prepared requisite documents and successfully filed his application for extension of time on E- Case Filing system on 20th May 2024 which is 12 days from the date when he was supplied with a copy of judgment and the same was admitted on the same date. He had a view that there were efforts that the Appellant employed to ensure he did not sleep over his right of appeal. He contended that, going by the data from E-case filing system, the application for extension of time was submitted on 20th May 2024 and not 23rd May 2024 as ruled out by the District Court Magistrate and that 9 being the case, the Appellant had to account for the 12 days of delay and not 15 days as stated by the district court. It was his further submission that he had to look for the Advocate who prepared the requisite documents and successfully filed his application for extension of time on the E-Case filing system on 20th May

2024. That reason is sufficient for the court to grant an extension of time. In conclusion, he submitted that the Appellant demonstrated adequate cause about which the District Court could base its exercise of discretionary powers to grant the application; unfortunately, the District Court disregarded these submissions. Per contra, Mr. Madaha argued that the Applicant has failed to account for each day of delay for fifteen (15) days from 8 th May 2024 the date he was served with the Copy of the Judgment by the trial Court, to 23th May 2024 when he filed E- case filing Application No. 11938 of 2024 for the extension of time. Nowhere, neither Applicant's Affidavit nor Reply to the Respondent's Counter Affidavit, contain even a single paragraph to account, for the fifteen days (15) days. He went on submitting that in his Written submission under page 6 para 2, the appellant states that Appellant delayed to file application for the extension of time, because he had to look for the Advocate who will prepare requisite documents, in which was not sworn anywhere by the 10 Appellant again is unreasonable that Appellant spent 15 days for consultation and preparation of documents while in facts knows that he was already out of time. He contended that the applicant's diligence is therefore called in question. To stress his point, he cited the case of George Timothy Mwaikusa vs National Microfinance Bank Plc Misc. Application No. 201 [2023] HC Labour Division, at Dar es Salaam; at page 12 of the judgment, Held that, "Since Applicant has failed to Account for each day of delay for ten (10) days from 18th April 2023 the date he was served with the order by the Court of the Appeal to 28th April 2023 when he filed Miscellaneous Application No. 112 of 2023,1 hold that there is no justification for granting this application." It was his submission, therefore, that the applicant has not fully accounted for the entire period of delay. Having carefully canvassed parties' submissions in this point, it is my conviction that this ground need not

detain this court. As the law stands, for a person to be granted extension of time, he must advance good and sufficient reasons. Further, each day of delay must be accounted for. This principle is articulated in the case Sebastian Ndaula Vs Grace Rwamafa, Civil Application No 4 of 2014 (CAT-unreported), where the 11 Court of Appeal had this to say on the applicant's duty to account for the delayed days: "...even a single day delay has to be accounted for, otherwise there would be no point in having rules prescribing periods within which specific steps have to be taken." In the present appeal. It is alleged that, the appellant received copies of judgment six days after the prescribed time of appeal that is on 8th May, 2024, therefore he had to account for the delayed days from 8 th May, 2024 when he obtained the copies of judgment, to 23 rd May, 2024 when the extension of time was filed. Nevertheless, the applicants did not account for these delayed days. As earlier alluded, each day of delay must be accounted for. It is questionable whether preparations for document on extensions can take 15 days when the appellant is already out of time. To me, that is apathy and lack of diligence. Since the applicant failed to account for 15-day delay, the contention by the applicants that the delay was caused by a delay in receiving copies of the judgment and decree lacks merit. Therefore, this ground is also bound to fail. Next for consideration is the 3rd ground in which the appellant contends that the magistrate erred in law and fact by giving a ruling based on the respondent's arguments and disregarding the appellant's arguments. He submitted that, from the ruling of the district court, the 12 Magistrate was wrong to base his verdict on the respondent's argument and avoid considering the appellant's arguments against the said decision. For instance, the district court did not give a reason why he opted to agree with the respondent's argument that for the illegality to stand as a ground for extension of time, such illegality must be clear on the face of the record. The appellant gave a litany of reasons why he thinks that the said judgment is tainted with material irregularity, among which include the decision not containing a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. The appellant also cited provisions of law and supporting decisions. Still, the District Court Magistrate disregarded the entire submission and paraphrased one paragraph from the respondent's argument without providing reasons for her decision to differ from the appellant's argument. Based on that submission, the appellant prays and asks this honourable court to allow the appeal, set aside the ruling and extracted order therein; and grant extension of time for the appellant to lodge appeal out time against the judgment of the Primary Court of Bagamoyo District in Shauri la Daawa no.52/2023 delivered on 2nd of April 2023. In response, Mr. Madaha argued that the primary court thoroughly examined the evidence, including testimony and documentary proof, and found that Appellant's actions of withdrawing money from Respondent's 13 SIM card were unlawful, because Appellant did so without the consent of the Respondent. Therefore, the trial court considered the evidence tendered by the parties to reach a fair decision based on the adduced proof by the parties, as shown on page one of the judgment. He thus implores the Honourable Court to make a finding and hold that this Appeal lacks merit, and prays that this appeal be dismissed with costs. I have keenly considered and weighed the submission by the

appellant's counsel. I should state from the outset that the respondent has missed a point in the appellant's submission regarding this ground. Thus, I will disregard his submission on this point. Reverting to the merit or demerit of this ground, it is undisputed that, as a matter of general principle, whether to grant or refuse an application for extension of time is entirely in the discretion of the court. Still, that discretion is judicially exercised by the rules of reason and justice. Therefore, the appellant's contention that the trial magistrate chose to believe the respondent only is baseless. The district court magistrate considered the point of illegality mentioned by the appellant and concluded that the same is not apparent on the face of the record. As previously stated, claiming illegality alone is insufficient to prove that there are sufficient reasons to grant an extension of time. Thus, it is not 14 a matter of choosing sides but adhering to the law. Therefore, this ground lacks merit and is therefore dismissed. That being said and done, the appeal is destitute of merit, and the same is dismissed in its entirety. It is so ordered accordingly. Dated at Dar es Salaam this 27th March, 2025. H.R. MWANGA JUDGE. 27/03/2025 COURT: Judgment has been delivered at Dar es Salaam on 27th March, 2025, in the presence of Appellant and Respondent in person. H.R. MWANGA JUDGE 27/03/2025 15

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