

TANZANIA / JUDGMENT

RICHARD MWAISEBA 222 edited

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MANYARA AT BABATI MISC. CIVIL APPLICATION NO. 17768 OF 2024 (C/F Civil Case No. 16 of
2023, In the High Court of the United Republic of Tanzania, Manyara Sub-Registry at Babati)
RICHARD MWAISEBA..... Ist APPLICANT THE ATTORNEY
GENERAL..... 2nd APPLICANT HALFAN A.
MATIPULA..... 3rd APPLICANT VERSUS LAWRENCE SULUMBU
TARA..... RESPONDENT

RULING

13th & 18th December, 2024 KAMUZORA, J This is an application for extension of time to file a notice of appeal to the Court of Appeal against the decision of this court in Civil Case No. 16 of 2023. The application was preferred under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] which read; "Subject to subsection (2), the High Court or, where an appeal Ues from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the Page 1 of 9 subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired." The above provision gives discretionary powers to this court to extend time for filing a notice of intention to appeal. Despite such discretion, it is a settled principle that the applicant has to demonstrate good cause for the delay. See, the case of Lyamuya Construction Company Vs Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 TanzLii [2011] TZCA 4. The question therefore is whether the applicants in the matter at hand were able to demonstrate good cause for the delay to deserve extension of time. This application was supported by the affidavit of Mr. Leyan Mbise, learned state attorney from the office of solicitor general. He deponed that, the decision of this court delivered on 09th May, 2024 is tainted with material illegality. That, it was issued in violation of the principles of law; in misapprehension of evidence which resulted into miscarriage of justice and that, the 1st and 3rd applicants were sued in their personal capacity. He prayed for extension of time to lodge a notice of appeal as the Page 2 of 9 applicants have been in court corridors seeking for justice and the delay is not inordinate. Submitting in support of application the counsel for the applicants argued that the applicants delayed for 25 days only as they were consulting their legal representative on the implication of the decision passed against

them in their personal capacity. That, after they had received clarification on the legal implication of the decision, they immediately filed this application thus, the delay is not inordinate. Referring the decision in *Lyamuya Construction* (supra), the counsel for the applicant added that, there is illegality in the decision of this court which need to be resolved by the Court of Appeal. That, the said illegality is based on misapprehension of evidence and the fact that the 1st and 3rd applicants were sued in their personal capacity and ordered to compensate the respondent for something done in their official capacity. He therefore prayed for this court to extend time for filing a notice of appeal for the applicants to approach the Court of Appeal and seek redress for the wrongful imposition of personal liability for action done in course of performing their official duties. In his counter affidavit and reply submission the respondent challenged the applicants' allegation over the illegality of the court's decision. He submitted that, the 1st appellant was sued as a public officer Page 3 of 9 because his action was in course of his duty as Officer Commanding Criminal Investigation Department (OC CID) of Babati District. That, the 3rd applicant was sued in personal capacity because his action was not in course of his duty as a public officer. He argued that, in their written statement of defence, the applicants never raised the issue that they were wrongly sued in individual capacity for they only claimed that the respondent was lawfully arrested and detained. That, the applicants were held liable for their action after the court was satisfied that they did not act in official capacity rather in their individual capacity. The respondent further submitted that, the applicants failed to account for each day of the delay or demonstrate good cause for the delay or existence of any illegality. He referred the guidelines for extension of time set in the case of *Bharya Engineering and Another Vs. Hamoud Ahmed Nassor* [2018], TLR 50 and the case of *Lyamuya Construction* (supra) and insisted that they were not met by the applicants. He therefore prayed for the dismissal of this application with costs. Having gone through the records and competing arguments from both parties, the question is whether the applicants demonstrated sufficient cause and accounted for the delay. The principle on what is to be considered in extending time is well known to parties and they both Page 4 of 9 referred a land mark case of *Lyamuya Construction* which laid down guidelines for determination of an application for extension of time. In the matter at hand, the applicants pleaded illegality and reasonableness in pursuing their right. On the alleged illegality, the applicant is bound to describe particulars of such illegality or point of law which must also be apparent in the face of records. See, the case of *Lyamuya Construction* page 9 where it was held; "...it cannot in my view, be said that in *VALAMBHIA's* case, the Court meant to draw a general rule that every applicant who demonstrate 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." In the matter at hand, I have discovered that, what is raised as point of illegality does not feature in the record rather, it was raised in this application. The illegality pointed out in the affidavit supporting the application are that; this court misapprehended the evidence and made a decision against the 1st and 3rd applicants who were sued in their personal capacity while discharging their official duties. It is unfortunate that there Page 5 of 9 is no explanation on how the evidence was misapprehended and if such

misapprehension of evidence resulted to illegality. On the argument that the applicants were sued in individual capacity, I have gone through the pleadings and the judgment of this court which the applicant intends to challenge. There is no doubt that the 1st and 3rd applicants were civil servants by occupation for the 1st applicant was the OC CID of Babati District while the 3rd applicant was the District Administrative Secretary (DAS) of Babati District. However, they were found liable in their individual capacity for unlawful arrest and detention of the respondent and ordered to pay damages to the respondent. In their written statement of defence, the applicants never raised an issue of being sued in individual capacity and it follows therefore that, even the issues framed during hearing never reflected if that was an issue to be determined by the court. Therefore, there is no visible point of illegality which can stand as sufficient cause in extending time to lodge notice of appeal. Apart from illegality, the applicants prayed for this court to consider that the applicants have shown diligence and the delay was not inordinate. In this, other guidelines set in the case of *Lyamuya Construction* (supra) are to be considered and they include; Page 6 of 9

- i. Accounting for each day of the delay. ii. The delay must not be inordinate. Hi. The Applicant must show diligence and not apathy, negligence or sloppiness of action that he intends to take. As regard to accounting for each day of delay, the records show that the decision which is intended to be challenged was delivered by this court on 09/05/2024 and this application was lodged before this court on 03/07/2024, almost 55 days from the date of the decision. As well submitted by the counsel for the applicant, Rule 83 (2) of the Court of Appeal Rules requires a notice of appeal to the Court of Appeal to be lodged within 30 days of the date of decision intended to be challenged thus, there was a delay of 25 days which was unaccounted by the applicants. In *Lyamuya Construction* (supra) there was a delay of similar period of 25 days and the court at page 8 held; "This, in my reckoning, makes, a total of 25 days un-accounted for, and I cannot ignore it. The applicant's diligence is therefore called in question; but the conclusion that the applicant has not fully accounted for all the period of delay is inescapable." Guided by the above decision, I also do not agree with the applicants' argument that the delay was accounted for. While 25 days is considered not inordinate by the applicants, it becomes inordinate where the applicants are unable to demonstrate to this court what they were Page 7 of 9 doing for all 25 days. It was expected for the applicant to state their actions during that period for this court to consider that such actions could reasonably consume the period of 25 days making the applicants unable to file their case. The applicants' claim that they were seeking for clarification on the legal implication of the decision was not even pleaded in their affidavit therefore, an afterthought and such claim cannot stand to justify the delay of 25 days. Even by assuming that it was pleaded, still, the applicants were bound to demonstrate how they spent 25 days seeking for clarification. On whether the applicant acted diligently, they claimed that they have been in court corridors trying to pursue their right but their affidavit and submission does not show what they were doing in court corridors. Apart from stating in their submission that they were seeking for legal clarification over the legal implication of the decision of this court, nothing shows how and when they sought for legal clarification or when and what exactly

there were doing which could be a reason for not filing their appeal on time. In other words, the applicants did not demonstrate exactly what they were doing to justify their inaction in pursuing their right. They cannot therefore claim to have acted diligently. Page 8 of 9 From the above discussion, I find no merit in this application and proceed to dismiss it with costs. DATE at BABATI this 18th day of December, 2024 ZORA JUDGE Page 9 of 9

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