

**IN THE HIGH COURT OF ZANZIBAR  
HELD AT TUNGUU  
CIVIL APPLICATION NO 66 OF 2023**

(Arising from the Civil Case No 31 of 2018 of the High Court of Zanzibar at Tunguu)

**Haidar Mohamed Hussein  
Farida Bashir Hassanali ..... Applicants**

VERSUS

**Akbar Habib Hassanali ..... Respondent**

**RULING**

***15.12.2023 & 01.02.2024***

***S.A.Hassan,J.***

Applicants herein are seeking for extension of time to file notice of intention to appeal against the Judgment and Decree of the High Court dated 13<sup>th</sup> August, 2019. The application is brought under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 and Rule 47 of the Tanzania Court of Appeal Rules, 2009 as amended and is supported by an affidavit sworn in by Rajab Abdallah Rajab, advocate for the applicants who also represented the applicants on the date set for hearing, while the respondent enjoyed the service of the learned advocate Abdulkhaliq Aley.

On the date set for hearing both advocate for the applicants and the respondent prayed to adopt the Chamber summons, affidavit and counter affidavit filed as part of their submission.

In his submission, advocate for the applicants told the court that his application is based on the fact that the applicants had appealed their case at the Court of Appeal sitting in Zanzibar only to find out that the said appeal was time barred hence struck out and for that reason they are now filing to seek extension of time to file notice of appeal. In support to his prayer he relied on the case of **Bank M (Tanzania) Limited**

**Vs Enock Mwakyusa**, Civil Application 520/18 of 2017, CAT at Dar es Salaam (unreported) where the Court distinguished between real or actual delay and those delays which are technical delays.

The advocate submitted further that in the High Court decision there is illegality such as there were issues framed as well as the judgment on admission, and for that he seeks this court to extend time to file notice of appeal as prayed.

In his reply, advocate for the respondent argued that the ground of not being idle should not suffice the prayer sought and that on the ground of illegality he did not agree with as High Court granted judgment on admission in accordance to O.XIV R VI regardless the fact that there were issues framed. He went of submitting that both parties were given right to be heard and at the end judgment in admission was made and that is not illegal. At the end he concluded that grounds for extension of time are not met hence prayed for the application to be dismissed.

In rejoinder, the applicants' advocate emphasized on the ground of illegality, that is issues framed vis-à-vis judgment on admission in echoing his prayer for the extension of time to file notice of appeal.

When both parties ended their submission, this court did note that none of the party did mention about the first delay which made the case at the Court of Appeal be time barred hence both counsels were given chance to address the court on.

In address to the issue raised by the Court, Advocate Rajab submitted that records show that the first delay was caused by non-compliance of Rule 90 (1) of the Court of Appeal Rules 2009 by the then advocate who handed the case as he was to request for supply of certified copies of the proceeding within thirty days from the date of judgment hence 13<sup>th</sup> August 2019, but he did so on the 30<sup>th</sup> October, 2019 which is lapse of 78 days, he ended his submission by stating that the mistake was caused by the advocate who then handed the file, hence penalizing the applicants will not be fair.

Meanwhile advocate for the respondent submitted that the notice of appeal was submitted within time, and the previous advocate who handed the cases understands the law, however, he is the only one who knows the reason for the delay.

After carefully hearing submissions from both sides, I am of the settled view that the main issue for my determination is whether the applicant has good reasons for this Court to grant the extension as applied, in doing so I will be guided with S.11 (1) of AJA and Rule 47 of the Tanzania Court of Appeal Rules, 2009 as amended and principles outlined by the case law relevant to this matter.

S.11 (1) of AJA cap 141 laws of Tanzania provides:

Subject to the subsection (2), the High Court or where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend time for giving notice on intention to appeal from a judgment of the High Court concerned or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

Whereas Rule 47 of the Court of Appeal Rules, 2009 as amended has it that;

Where application may be made to the Court or to the High Court, it shall in the first instance be made to the High Court or tribunal as the case may be..... On an application or of its own motion give leave to appeal or extend time for the doing of any act, notwithstanding the fact that no application has been made to the High Court.

From the above provisions it is clear that this court has powers to extend time for giving notice on intention to appeal from the judgment of the High Court, however, that power is based on the discretion of the Court.

The position of law has it that the discretion must be judicial and must be exercised according to the rules of reason and justice. There are numbers of authorities which have formulated guidelines to consider in granting extension of time and I wish to refer inhere the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustee of Young Christian Women Association of Tanzania**, Civil Application No. 2 of 2010 where the following guidelines were highlighted:

*(a) The applicant must account for all the period of delay;*

*(b) The delay should not be in ordinate;*

*(c) The application must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*

*(d) The court feels that there are other sufficient reasons, such as existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged.*

See also the case of **Mbogo and Another V. Shah** [1968] EALR 68.

Applying the above laid principles in the case in hand, it is clear that there was no straightforward explanation as to the accounting for days of delay, however, once the issue of illegality in the decision sought to be challenged is raised, that amount to good cause and the Court, even if every day of delay in not accounted for, would grant extension sought so as to rectify the illegality on appeal as decided in the case of **Mohamed Salum Nahdi Vs Elizabeth Jeremiah**, CAT at Dar es Salaam, Civil Reference no 14 of 2017 (unreported). See also the case of case of **Principal Secretary, Ministry of Defense and national Service V D P Valambhia** [1992] TLR 387 where the Court held:

“Whereas here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute “sufficient

reason" within the meaning of rule 8 [now rule 10] of the Rule for extending time"

I hold a view that the raised illegality is sufficient cause as a threshold for consideration as the basis for enlargement of time hence I find this application meritorious and therefore I proceed to grant the applicants' application to extend time to file notice of intention to appeal against the Judgment and Decree of the High Court within fourteen (14) days from today.

It is so ordered.

DATED at **ZANZIBAR**, this 1<sup>st</sup> day of February, 2024.



**SALMA ALI HASSSAN**  
**JUDGE**  
**01.02.2024**

Ruling is delivered in chambers, in the presence of both applicants and Advocate Rajab Abdallah.



**SALMA ALI HASSSAN**  
**JUDGE**  
**01.02.2024**

