

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
KIGOMA DISTRICT REGISTRY**

AT KIGOMA

MISC. CIVIL APPLICATION NO. 18 OF 2022

(ARISING FROM CIVIL CASE NO. 06 OF 2019)

TANZANIA REDCROSS SOCIETY APPLICANT

VERSUS

SUPER MAGALA INVESTMENT

AND GENERAL SUPPLY RESPONDENT

Date of Last Order: 05.12.2022

Date of Ruling: 15.12.2022

RULING

MAGOIGA, J.

This is an application made under section 11(1) of the Appellate Jurisdiction Act,[Cap 141 R.E. 2019] for an extension of time within which to file an appeal to the Court of Appeal of Tanzania. The impugned decision to be challenged was delivered on 04.08.2022. The applicant advanced two reasons. **One**, is that the delay to file an appeal subject of this extension was due to technical delay after the first appeal which was filed in time to be struck out for want of some exhibits. **Two**, that the decision of the trial judge has illegalities which need to be addressed by way of appeal in that the letter dated 30.11.2018 which formed the basis of the impugned decision was not

admitted in evidence during trial. These reasons are contained in paragraphs 2 to 10 of the affidavit in support of this application.

In the counter affidavit by the respondent resisted this application and submitted that failure to prosecute the appeal was due to negligence on the part of the applicant for failure to include exhibits tendered during trial, leading to the striking out of the appeal even after being granted time to file one. On the issue of illegality, it was the strong submission that no illegality has been established and is not apparent on the face of the record. On the above reasons, the learned advocate for the respondent urged this court to dismiss this application with costs.

When this application was called on for hearing, the applicant was enjoying the legal service of Messrs. Michael Mwangati and Thomas Msasa, learned advocates and the respondent was enjoying the legal services of Mr. Ignatus Kagashe. Mainly their oral submissions were based on expounding the contents of the affidavit and counter affidavit.

It is trite law in our jurisdiction, even without citing case law that, a party seeking an extension of time must account for each day of delay and give sufficient reasons why extension should be granted. More so, as an exception

to the above stated rule is that where an illegality is established, the court can extend time notwithstanding that the applicant has failed to account for each day of delay.

Guided by the above two principles for grant of extension of time and coming to this application; having carefully considered the contents of the affidavit and the oral submissions, with due respect to the learned advocates for the applicant, I find the applicant utterly failed to account for each day of delay given the fact that the first appeal was struck out on 7th June, 2022 and the instant application was filed on 12th August, 2022. There are more than 65 days not accounted for.

However, on illegality, with due respect to Mr. Kagashe, learned advocate for the respondent, illegality need not necessarily be apparent on the face of the record but what is necessary to be apparent on record is the error.

In this application, all considered and taken on board, I find this point worth for grant of the extension because both parties' learned advocates are at one that, exhibit P3 created confusion and it was the basis of the impugned decision but which exhibit was not admitted and marked in evidence.



With that note, this application must be and is hereby granted with no order as to costs. The applicant is hereby given 30 days within which to file notice and take all necessary measures to have his appeal heard on merits.

Order accordingly.

Dated at Kigoma this 15th day of December, 2022.



A handwritten signature in blue ink, consisting of a series of vertical lines and a horizontal line, followed by a stylized flourish.

S. M. MAGOIGA

JUDGE

15/12/2022