

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT MBEYA**  
**(CORAM: MWANDAMBO, J.A., KAIRO, J.A., And ISSA, J.A.)**

**CIVIL APPEAL NO. 86 OF 2022**

**JOSEPHAT JOSEPH MUSHI ..... 1<sup>ST</sup> APPELLANT**  
**TANZANIA CAPITAL FISHERIES &**  
**TRANSPORT COMPANY LIMITED ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**TANZANIA POSTAL BANK PLC. .... 1<sup>ST</sup> RESPONDENT**  
**TAMBAZA AUCTION MART &**  
**GENERAL BROKER LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Mbeya)**

**(Mbagwa, J.)**

**dated the 29<sup>th</sup> day of October, 2021**

**in**

**Misc. Land Application No. 04 of 2021**

-----

**JUDGMENT OF THE COURT**

29<sup>th</sup> November & 3<sup>rd</sup> December, 2024

**ISSA, J.A.:**

The dispute giving rise to this appeal originated from the decision of the High Court of Tanzania at Mbeya (Mbagwa, J.) in Misc. Land Application No. 04 of 2021. Before the appellants filed the said application at the High Court, the parties had their dispute settled by compromise at the District Land and Housing Tribunal for Mbeya (the DLHT) in Land Application No. 65 of 2019. The deed of settlement of a suit was made under Order XXIII Rule 3 of the Civil Procedure Code and was filed in

Court culminating into a consent judgment entered on 16<sup>th</sup> December, 2019. One of the terms of the consent judgment was that the 2<sup>nd</sup> appellant who was indebted to the 1<sup>st</sup> respondent was given a grace period for repayment of the sum amounting to TZS. 360,413,181.55.

The 2<sup>nd</sup> appellant, somehow, failed to repay the amount agreed in the consent judgment, hence, together with the 1<sup>st</sup> appellant decided to challenge the consent judgment at the High Court. The time was not on their side, hence they lodged Misc. Land Application No. 4 of 2021 asking the court to grant extension of time within which to file a memorandum of appeal out of time. The grounds for extension of time are seen in paragraphs 5, 6 and 7 of the affidavit sworn by the 1<sup>st</sup> Appellant which read:

- "5. That I have been advised by my advocate that the amount settled are out of the jurisdiction of District Land and Housing Tribunal.*
- 6. That I have noted that the District Land and Housing Tribunal for Mbeya at Mbeya acted without jurisdiction and the delay to file this application was not deliberate.*
- 7. That there are illegality and irregularities in the face of records of the trial tribunal which needed to be corrected by this honourable court if*

*extension of time will be granted and the illegality is:*

*(a) The Trial Tribunal has no jurisdiction to entertain the suit."*

The High Court delivered its ruling on 29<sup>th</sup> October, 2021 in which it refused to grant the extension of time as the appellants failed to establish illegality in the decision sought to be challenged.

Aggrieved, the appellants lodged the instant appeal predicated on four grounds of appeal followed by written submissions. The second ground of appeal was outrightly withdrawn. The remaining three grounds boil down to one issue which is that, there was an illegality in the decision of District Land and Housing Tribunal for Mbeya as it had no jurisdiction to enter a consent judgment involving an amount of TZS. 360,413,181.55.

The appeal before us was met with a preliminary objection raised by respondents on the point of law that "*the appeal is incompetent as the record of appeal is incomplete contrary to Rule 96(2) of the Tanzania Court of Appeal Rules of 2009 as amended.*"

At the hearing of the appeal, the appellants were represented by Mr. Simon Mwakolo, learned advocate, whereas the respondents had the services of Mr. Joseph Tibaijuka and Mr. Michael Fyumagwa, learned State Attorneys.

At the outset, Mr. Tibaijuka sought the Court's permission, which was granted, to raise preliminary issues. **One**, he prayed to the Court to be allowed to make amendment of the name of the 1<sup>st</sup> respondent. He submitted that, following the recent proclamation the name of the 1<sup>st</sup> respondent was changed to Tanzania Commercial Bank Plc. He therefore prayed to the Court to substitute Tanzania Commercial Bank Plc in the place of the Tanzania Postal Bank Pic. Mr. Mwakolo on his part had no objection to the prayer and the Court granted it instantly. **Two**, he prayed to withdraw the preliminary objection which the respondents raised. The Court also granted the prayer and the hearing of the appeal proceeded on merit.

Addressing the Court, Mr. Mwakolo was very brief. He adopted his written submission which was lodged earlier on and submitted that section 33 of the Land Disputes Courts Act, Cap. 216 provides for the jurisdiction of the DLHT in which it can hear disputes where the value of the subject matter does not exceed TZS. 200 million. He argued that in the case before the DLHT, it entered a consent judgment above the mentioned amount, hence, there was an illegality in its decision. He added that illegality is a good cause for extension of time. He cited the Court's decision in **Kalunga and Company Advocates v. NBC** [2006] T.L.R.

235 to reinforce his argument. Finally, he prayed to the Court allow the appeal.

Mr. Tibaijuka addressing the Court on behalf of the respondents submitted that, the DLHT had jurisdiction to entertain the matter before it as the value of the property which was about to be sold was not mentioned in the application. He added that jurisdiction in civil matter is determined by a substantive claim and TZS. 360 million was not a substantive claim, rather it was a relief awarded by the DLHT.

Upon reflection, Mr. Tibaijuka changed his stance and submitted that the matter before the Court is an appeal from the decision of the High Court and not from the DLHT. Hence, the task of the Court is to see whether the High Court correctly exercised its discretion in refusing to grant the extension of time on the ground of illegality. He submitted that what the learned judge was required to do was to determine whether the alleged illegality was there and if it was apparent on the face of record. In this case, the learned judge went beyond and determined the merits of the intended appeal. He, therefore prayed for the Court to allow this appeal and grant the extension of time as prayed by the appellants.

We shall now proceed to determine the ground of appeal and the issue for determination is whether the learned judge correctly exercised

his discretion to refuse the application for extension of time on the ground of illegality. It was common ground that the appellants did not appeal in time, hence, they sought an extension of time to file their appeal on the ground of illegality in the decision of the DLHT.

The law is settled that illegality of the decision sought to be challenged is one of the accepted grounds for extension of time. See – **Kalunga and Company Advocates v. NBC** (supra), **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] T.L.R. 387 and **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women’s Christians Association of Tanzania** [2011] TZCA 4, TANZLII.

Our next enquiry is what the term “illegality” entails: The term ‘illegality’ is not a bottom less pit where every legal error can be dumped into. This Court in **Charles Richard Kombe v. Kinondoni Municipal Council** [2023] TZCA 137, TANZLII and **Kabula Azaria Ng’ondi and 2 Others v. Maria Francis Zumba and Another**, [2023] TZCA 162, TANZLII dealt with the issue of illegality. The Court quoted the definition of the term ‘illegality’ from the Black’s Law Dictionary 11<sup>th</sup> Edition, page 815, which provides:

*"1. An act that is not authorised by law*

*2. The state of not being legally authorised."*

Further, the Court cited the definition provided by Mulla's Code of Civil Procedure where the learned authors at page 1381 stated:

*"It is settled law that where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it acted illegally or with material irregularity, merely because it has come to an erroneous decision on a question of fact or even of law."*

Furthermore, the Court cited an Indian case of **Keshardeo Chamria v. Radha Kissen Chamria and Others**, AIR 1953 SC 23, 1953 SCR 136 where the Supreme Court of India wrote:

*"... the words 'illegally' and 'material irregularity' do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not errors of either law or fact after the formalities which the law prescribes have been complied with."*

In **Charles Richard Kombe** (supra) on page 8 we came to the conclusion thus:

*"...for a decision to be attacked on ground of illegality, one has to successfully argue that the court acted illegally for want of jurisdiction, or for denial of right to be heard or that the matter was time barred."*

It is also the law that for an application to succeed on the ground of illegality, such ground must be apparent on the face of the impugned decision. The Court in various cases including **Chandrakant Joshubai Patel v. The Republic** [2003]TZCA 37, TANZLII, **Edger Kahwili v. Amer Mbarak and Another**, [2020] TZCA 20, TANZLII, **Interbest Investment Company Limited v. Standard Chartered Bank T. Limited** [2022] TZCA 550, TANZLII and **Grand Alliance Limited v. Wilfred Lucas Tarimo and 4 Others** [2022] TZCA 541, TANZLII addressed the issue of apparent error on the face of record.

In **Chandrakant** (supra), the Court quoted from a book by Mulla on the Code of Civil Procedure (14 ed.) pages 2335 - 2336 where the learned authors wrote:

*"An error apparent on the face of the record must be such as can be seen by one who runs and reads, **that is, an obvious and patent mistake and not something which be established by a long drawn process of reasoning on points on which there may***

***conceivably be two opinions... It can be said of an error that is apparent on the face of record when it is obvious and self-evident and does not require an elaborate argument to be established."***

(Emphasis supplied)

Leaping to the ground of appeal raised we are of the settled view that the ground advanced for seeking extension of time was that of illegality based on lack of jurisdiction. It is clear that the DLHT does not have jurisdiction to hear a dispute where the value of the subject matter is above TZS. 200 million. However, the issue as to whether TZS. 360 million was a substantive claim or not is not for the Court to determine at the moment. What is clear is that, a decree of the DLHT above TZS. 200 million demonstrates an illegality apparent on the face of record.

Further, If one looks at paragraphs 5, 6, and 7 of the affidavit of the 1<sup>st</sup> appellant supporting the application for extension of time which was quoted earlier, it is clear that the issue of illegality was based on the lack of jurisdiction and was apparent on the face of the record. Therefore, we agree with both learned counsel that the conditions for granting extension of time were met. The learned judge strayed into an error when he evaluated the merits of the intended appeal and refused the extension of time.

In the circumstances, we allow the appeal and quash the decision of the High Court. The appellants are granted 45 days to file their appeal before the High Court. There will be no order as to costs.

Order accordingly.

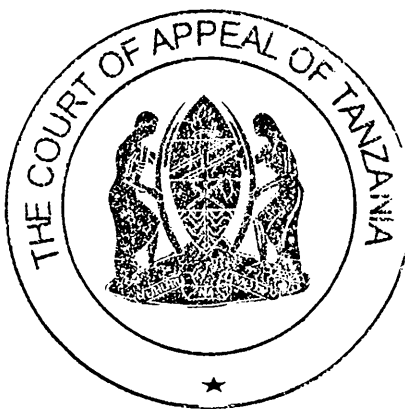
**DATED** at **MBEYA** this 3<sup>rd</sup> day of December, 2024.

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

L. G. KAIRO  
**JUSTICE OF APPEAL**

A. A. ISSA  
**JUSTICE OF APPEAL**

The Judgment delivered this 3<sup>rd</sup> day of December, 2024 in the presence of Mr. Simon Mwakolo, learned counsel for the Appellants and Mr. Michael Fyumagwa, learned State Attorney for the Respondents is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**