

**SNAPSHOT OF THE CAT DECISION IN NATHANAEL
MWAKIPITI KIGWILA VS. MAGRETH ANDULILE
BUKUKU, CIVIL APPEAL NO. 5 OF 2023, COURT OF
APPEAL OF TANZANIA, 12 AUGUST 2025**

1.0.Introduction

This was one of the most, practice-oriented decisions of the Court of Appeal of Tanzania as delivered in *Nathanael Mwakipiti Kigwila v. Magreth Andulile Bukuku, Civil Appeal No. 5 of 2023*, Court of Appeal of Tanzania, on 12th August, 2025. In this decision Gloria Kyonjola appears in the facts as the appellant's spouse who filed separate objection proceedings. At the heart of this appeal the respondent is Magreth Andulile Bukuku as explored below and ably argued by our own Advocate Mwang'enza Mapembe of Lyson Law Group;

Before getting to the facts, we quote Lord Mansfield when he remarked that "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." *Holman v. Johnson* (1775) 1 Cowp 341, per Lord Mansfield

2.0.What the Case was about

The appellant sought to overturn a High Court refusal to extend time so he could move to set aside an ex parte judgment delivered in Land Case No. 40 of 2018. He argued that:

- (i) He had a reasonable explanation for delay and
- (ii) The ex parte judgment was "illegal," especially because he was not notified of the judgment delivery date. The High Court had refused extension; the Court of Appeal dismissed the appeal with costs.

3.0.Core holdings & Principles Enunciated

1. Each day of delay must be accounted for – diligence matters.

The Court treated the delay as running at least from 22 Feb 2021 (when the appellant's lawyers appeared in execution proceedings) to 29 July 2021 (when the extension application was filed) and found no credible, specific, day-to-day accounting. Vague references to engaging an unnamed law firm and to the spouse's separate objection proceedings did not excuse the delay.

2. No-notice of judgment delivery is tantamount to a procedural irregularity, not "illegality."

The Court drew a sharp line between irregularity and illegality for purposes of the Devram Valambhia gateway (where illegality of sufficient importance can justify extension even with delay). Lack of formal notice of the date of pronouncing an ex



parte judgment does not by itself amount to an illegality that vitiates the judgment; it is at most a procedural irregularity – insufficient to trigger the *Valambhia* exception.

3. What counts as “illegality” (the *Valambhia* gateway) is narrow.

Reaffirming *Lyamuya* and *Charles Richard Kombe*, the Court stressed that “illegality” must be apparent on the face of the record and typically concerns jurisdiction, denial of the right to be heard, or limitation, not points discoverable only through “long-drawn argument.” The Court rejected the appellant’s re-characterization of alleged “irregularities” as “illegalities.”

4. Summary-procedure complaint did not rescue the situation.

The appellant’s contention that the suit began under summary procedure and was later treated as an ordinary claim did not reveal any facial illegality undermining the judgment; it did not justify extension.

5. **Bottom line: Appeal dismissed with costs.** The Court unanimously held the illegality claim failed and the delay was not satisfactorily explained thus the appeal was deficient of substance.

4.0. Authorities the Court leaned and their imperativeness

Devram Valambhia: “Illegality of sufficient importance” can justify extension despite delay – but only where truly grave and **apparent**.

Lyamuya Construction: Clarifies that the point of law must be of sufficient importance and apparent on the face of the record.

Charles Richard Kombe: Defines “illegality” vs “material irregularity”; narrows gateway to things like **jurisdiction, denial of hearing, limitation**.

Bushiri Hassani: Account for every day of delay otherwise known as a strict diligence standard.

5.0. Practical takeaways for litigators & parties

Move fast once you learn of an *ex parte* decree. Retainers, unnamed “law firms,” or parallel steps by a spouse will not excuse months of inactivity. Put dates, steps taken, and responsible counsel on the record.

A party ought not over-plead “*illegality*.” Especially where it is meant to be used as an escape route as such lack of notice of judgment delivery is not the silver bullet; without a facial jurisdictional defect, denial of hearing, or limitation bar, the *Valambhia* door stays shut.

Separate proceedings do not toll your clock. Objection proceedings by a third party (even a spouse) will never stop your own time from running to seek extension.



Build a timestamped paper trail. If you rely on counsel's steps, name them, state dates of instruction, steps taken, and attach supporting correspondence; the Court is unimpressed by generalities.

6.0. Desideratum of the Insight

The Court of Appeal of Tanzania tightens the illegality gateway and doubles down on diligence: stamping its foot that in the absence of a clear, prima-facie violation like jurisdiction or denial of hearing, procedural missteps including non-delivery of notices will not rescue a poorly-explained delay.



REFERENCES

Charles Richard Kombe v. Kinondoni Municipal Council [2023] TZCA 137,

Holman v. Johnson (1775) 1 Cowp 341,

Lyamuya Construction Co. Ltd v. Board of Registered of Young Women's Christian Association of Tanzania [2011] TZCA 4

Nathanael Mwakipiti Kigwila v. Magreth Andulile Bukuku, Civil Appeal No. 5 of 2023

Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia [1992] T.L.R

Stephen Ngalambe v. Onesmo Ezekia Chaula & Others [2022] TZCA 130

Transport Equipment Ltd v Devram P. Valambhia [1995] TLR 161 (CA)

