IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 372/01/2018

LUDGER BERNARD NYONI ..... APPLICANT

VERSUS

NATIONAL HOUSING CORPORATION ..... RESPONDENT

(Application for extension of time within which to apply for revision from the Decision of the High Court of Tanzania of Tanzania)

(Nyerere, J.)

dated the 11th day of December, 2008

in

Civil Application No. 4 of 2008

.....

RULING

3rd & 8th May, 2019

NDIKA, J.A.:

In this ruling, I am called upon to decide whether I should exercise my discretion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) in favour of Ludger Bernard Nyoni, the applicant herein, to enlarge time within which to apply for revision of the decision of the High Court of Tanzania at Dar es Salaam dated 11th December, 2008 in Civil Application No. 4 of 2008.

The essential facts of the matter are very brief. On 24th June, 2014 a single Justice of the Court (Bwana, J.A.) granted the applicant a period of thirty days within which to apply to this Court for revision of the decision of

the High Court at Dar es Salaam alluded to earlier. The applicant duly filed the intended application but the matter was subsequently struck out by the Court, on account of incompetence, on a date that is unfortunately not disclosed in the present application. Desirous of resuscitating his quest for revision, the applicant now seeks extension of time.

In his accompanying affidavit, the applicant attributes the delay to his enduring ill-health. Annexed to the affidavit are three medical reports, the first one being a letter from the Medical Officer in Charge, Amana Regional Referral Hospital dated 10th July, 2018. It states that the applicant has been attending clinic at the hospital since December, 1999 after suffering allergic reaction to suspected food poisoning while he was in Bangladesh. Afterwards, he developed multiple septic wounds and experienced peripheral numbness, hearing loss, cataracts and prostatitis. The second report is an abdomen CT Scan dated 3rd December, 2015 issued by Muhimbili National Hospital (MNH) revealing that he was diagnosed with "bilateral renal cysts at superior poles of the kidney." The final chit is an undated account from MNH showing that he was anaemic.

The respondent, on its part, filed no affidavit in reply after being served with the notice of motion. Whether that course was deliberate or

inexplicable is rather immaterial. I would, nevertheless, observe that the absence of an affidavit in reply means that averments in the supporting affidavit are uncontested.

Before me, the applicant, fending for himself, stresses that he was prevented to re-launch his application for revision due to his long-standing and enduring ill-health. It is his further argument that the intended revision stands overwhelming chance of success and that the respondent will suffer no prejudice should the delay involved be condoned. He thus urges that time be enlarged as requested.

For the respondent, Mr. Aloyce Sekule, learned counsel, disagrees. He, at forefront, takes issue with a formal aspect of the application; that the notice of motion and the accompanying affidavit do not indicate or describe the decision of the High Court sought to be revised. Secondly, he argues that the supporting affidavit is silent on the date on which the initial application for revision was struck out by the Court and, therefore, it is difficult to determine if the applicant acted promptly and diligently to freshen his quest for revision. It is also his submission that the medical reports relied upon by the applicant are too general and that they do not give a full account of the entire period of delay. Accordingly, the learned

counsel prays that the matter be dismissed but he is understandably at ease that no order be made as regards costs.

Perhaps, I should interpose and address straight away the alleged formal deficiency of the application. Admittedly, it is apparent on the face of the notice of motion and the accompanying affidavit that the decision of the High Court intended to be revised is not disclosed as it should be. Nonetheless, I note from the annexed order of the single Justice of the Court alluded to earlier that it is explicitly indicated that the subject matter of the initial extension of time that was granted for applying to the Court for revision was the decision of the High Court dated 11th December, 2008 in Civil Application No. 4 of 2008. In view of that order, which is obviously a part of the notice of the motion, I would infer from the applicant's averments that his quest for revision relates to the aforesaid decision of the High Court.

Ahead of dealing with the substance of this application in the light of the opposing submissions of the parties, I wish to remark that although the Court's power for extending time under Rule 10 of the Rules is both broad and discretionary, it is exercisable upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the

phrase "good cause" so as to guide the exercise of the Court's discretion under Rule 10, but the Court consistently considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged: (see, for instance, this Court's unreported decisions in **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987; **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001; **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013; and **William Ndingu @ Ngoso v. Republic**, Criminal Appeal No. 3 of 2014). See also **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185; and **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

I have given due consideration to all the material on the record in the light of the submissions of the parties. The question that I have to determine is whether there is a good cause for condonation of the delay.

To begin with, I would respectfully agree with Mr. Sekule that the supporting affidavit is lacking so materially. In the first place, it does not state the date on which the Court struck out the applicant's first revision application. Furthermore, it does not state the date on which that revision was lodged pursuant to the extension of time granted by Bwana, J.A. on 24th June, 2014. This omission is significant and inexcusable; it makes it impossible for me to determine if the applicant acted with promptitude and diligence to revive his pursuit after the initial revision proved abortive.

Secondly, I would also agree with learned counsel for the respondent that the three annexed medical reports make a blanket claim that the applicant was in bad health between December, 1999 and July, 2018. He might have been ill as alleged and, indeed, at the hearing before me he was visibly frail and infirm. Nonetheless, it remains unclear why he was unable to take the necessary steps to pursue the intended revision if he was able to commute periodically to attend clinic at Amana Regional

Hospital. In my view, these reports do not provide any detailed and plausible account of the delay.

It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application: see, for example, the unreported decisions of this Court in **Bushiri Hassan v. Latifa Mashayo**, Civil Application No. 2 of 2007; **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011; **Crispian Juma Mkude v. Republic**, Criminal Application No. 34 of 2012; and **Sebastian Ndaula v. Grace Rwamafa (Legal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014.

Perhaps, I should add that beyond our borders, the Supreme Court of South Africa stated, in a similar vein, in **Uitenhage Transitional Local Council v. South African Revenue Service**, 2004 (1) SA 292 that:

> *"Condonation is not to be had merely for the asking;* ***a full detailed and accurate account of the causes of the delay and its effects*** *must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility."*
> [Emphasis added]

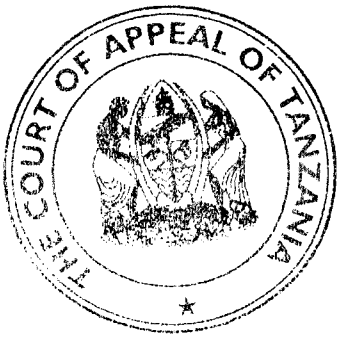
In the circumstances, I reject the applicant's explanation of the delay involved and hold him to have failed to account for each and every day of the delay.

In the upshot, I would dismiss the application. As the respondent did not press for costs, I order that each party to bear its own costs.

DATED at **DAR ES SALAAM** this 6th day of May, 2019.

G. A. M. NDIKA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL