

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 204/17 OF 2020

GABRIEL MATHIAS MICHAEL..... APPLICANT

VERSUS

HALIMA FERUZI & 2 OTHERSRESPONDENTS

**[Application for extension of time to apply for stay of execution of the
judgment and decree of the High Court of Tanzania
(Land Division), at Dar es Salaam]**

(Kente, J.)

dated the 28th day of April, 2015

in

Land Case No. 297A of 2009

RULING

22nd March & 24th May, 2022

KAIRO, J.A.:

The applicant in this application is seeking an order for enlargement of time within which to apply for stay of execution. The application is by way of notice of motion predicated under the provisions of Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit duly sworn by Mr. Samson Edward Mbamba, learned counsel for the applicant. In addition, the applicant has filed written submissions to support his application. The application has, however, been resisted by the respondents in their joint affidavit in

reply sworn by their learned advocate; Mr. Nyamhanga Wabeya, as well as in their written submissions in opposition.

The grounds for the application as per the notice of motion revolve around: **first**; that the delay was caused by the inability of the applicant to apply for stay of execution within time despite being served with the application for execution filed by the applicant, **second**; that though the applicant was granted leave to file the notice of appeal and later on 13th May, 2020 granted 14th days within which to lodge stay of execution, but the Registrar has been refusing to admit the application intended to be filed pursuant to the said order, as a result the granted time expired in the course, **third**; that there are illegalities and irregularities in the proceedings and decision of the High Court which is the subject of an application for stay of execution.

The material facts that prompted to the filling of the application as deposed by the applicant in his affidavit is that, the applicant was aggrieved by the decision of the High Court (Land Division) Case No. 297A of 2009 dated on 28th April, 2015 delivered against him. He decided to challenge it in Court and instructed Mr. Mbamba, learned advocate to represent him. Mr. Mbamba deposed that he filed Civil Application No. 3/17 of 2017 which was struck out on 18th June, 2019

for want of competence resulting to extinguishing the filed notice of appeal as well, thus, forcing him to apply for extension of time to file a fresh notice which he did vide Misc. Land Application No. 388 of 2019. The learned advocate went on to depose that, on 7th August, 2019 he was served with the application for execution on behalf of the applicant but he could not file an application for stay within the time prescribed because there was no notice of appeal filed by then. Mr. Mbamba further stated that the application for extension of time to file the said notice of appeal was granted on 10th December, 2019 with an order that the same be filed within 14 days which order was complied with.

He went on to depose that, he later lodged an application No. 588/17 of 2019 for extension of time within which to lodge stay of execution which was granted on 13th May, 2020 and was ordered to file it within 14 days from the date of the decision. He further deposed that, upon submitting the application to the Court on 21st May, 2020 the Registrar declined to admit it on account of failure by the applicant to cite the enabling provision. It was his further deposition that he re-submitted the application after rectifying the pointed-out error, but it was again rejected on 26th May, 2020 on the ground that it did not comply with the format of the forms prescribed by the Rules for filing

applications of this nature. He went on to state that, the entire process involved in pursuit of the matter resulted into the expiry of the 14 days granted on 13th May, 2020 hence the present application.

He submitted further that, he had to write a letter to the Chief Justice complaining on the circumstances and how his client was prejudiced. Mr. Mbamba deposed further that the other reason for applying for the extension of time is the involved illegalities and irregularities in the decision intended to be challenged as elaborated in paragraph 7 of his affidavit.

In their joint affidavit in reply, the respondents refuted all what was deposed by the applicant.

At the hearing before me, the applicant was represented by Mr. Mbamba, learned advocate as earlier stated while all of the respondents fended for themselves. All of the parties prayed to adopt their respective affidavits and the written submissions for and against the application. The parties also informed the Court that they had nothing substantial to add to their written submissions.

In his written submission, Mr. Mbamba expounded that the periods of delay are twofold: - **first;** from 7th August, 2019 when the application

for execution was served upon the applicant but he could not lodge an application for stay of execution because a notice of appeal had not been filed. He further elaborated that in terms of Rule 11 (3) of the Rules, a notice of appeal which he eventually lodged is a pre-condition for filing the said application and that it was after the filing of the notice of appeal that the applicant was able to apply for stay of execution. He supported his argument with the case of **Mekefason Mandari & Others vs. The Registered Trustees of the Archdiocese of Dar es Salaam**, Civil Application No. 397/17 of 2019 (unreported). He then urged the Court to find that the absence of the notice of appeal for the explained reason was sufficient cause to warrant the grant of the prayer sought in the notice of motion.

Second; from 13th May, 2020 when the applicant was granted 14 days within which to file the application for stay of execution, but failed to comply with the order due to the Registrar's act of refusing to admit the application. He elaborated that; the non-compliance was caused by the Registrar who kept on refusing to admit the application on account of allegedly incompetence which Mr. Mbamba contended to be untrue. He went on submitting that after expiry of the time granted, the applicant had to reorganize in terms of time and finance so as to file the

present application. He therefore concluded that the reasons for the delay in the matter at hand constitute sufficient cause and prayed the Court to grant the application with costs.

In their joint written submission opposing the application the respondents started by restating the principle regarding the grant of an application for extension of time to the effect that, a good cause has to be exhibited. They contended that throughout the affidavit and in his written submission, the applicant has failed to show good cause to move the Court to exercise its discretion in granting the extension of time which is being sought for the second time.

In elaboration, the respondents contended that, the applicant's first period of delay is just a narration of what transpired in this matter which is not disputed. According to them, the narration does not constitute good cause for the prayer sought.

Arguing for the second period of delay, the respondents contended that the applicant had previously filed a similar application which was granted on 13th May, 2020 and availed 14 days from the date of the ruling to do so but failed to comply with the order. They disputed the assertion by the applicant to associate his failure to comply, with the

refusal by the Registrar to admit the application. They argued that, though the Registrar has the powers under Rule 14 (3) and (4) to refuse or reject any document which is considered defective or does not comply with the requirement of Rule 12, but in case of rejection, the Registrar is legally obliged to inform the applicant in writing of such refusal directing what amendment is to be done. They went on submitting that, in the case at hand, there was no document attached to the affidavit by the applicant to support the alleged refusal.

They further contended that, the alleged document presented to the Court but rejected by the Registrar was expected to be attached to the affidavit in support of the notice of motion to verify the applicant's allegation, but that was not done. The respondents further refuted the assertion by the applicant that he had to complain to the Chief Justice through a letter (annexture GM6) with regard to the alleged denial of his documents. They contended that there is no proof that the said letter was presented and received by the office of the Chief Justice, but also no explanation was given as to whether the said letter was replied or not. The respondents thus concluded that, the said averments, despite being mere allegations, they also depict the negligence on the part of the applicant after being granted the previous order for extension of

time, as such there is no sufficient cause exhibited by the applicant to warrant the grant of the extension of time sought.

The respondents went on to argue that, even after the alleged refusal by the Registrar for the second time on 26th May, 2020 which was the deadline for the 14 days granted, the applicant filed this application on 8th June, 2020, that is after a lapse of 12 days which the respondents considered to be inordinate delay not accounted for. They cited the cases of **A-one Products & Brothers vs. Abdallah Almasi & 25 others**, Civil Application No. 586/18 of 2017 and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 (both unreported) to back up their arguments.

The respondents further refuted the applicant's averment that he had to reorganize in terms of time, finance and other resources before filing the current application. They contended that financial constraint is not a sufficient reason for extension of time. They referred the Court to the case of **Abdallah Salanga & 63 Others vs. Tanzania Harbours Authority**, Civil Reference No. 8 of 2003 (unreported) to back up their contentions.

In conclusion, the respondents submitted that, the reasons exhibited by the applicant do not warrant the grant of the extension of time and prayed the Court to dismiss the application with costs. It is noteworthy that the respondents did not address the issues of illegalities and irregularities raised by the applicant.

As rightly submitted by the parties in their submissions, the law is settled that, sufficient cause is a pre-condition to prompt the Court exercise its discretionary powers under Rule 10 of the Rules upon which this application is predicated. As to what constitute sufficient cause, various factors have to be considered including to account for all the period of delay which should not be inordinate; the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged. [See: **Tanga Cement Company Limited vs. Jumanne Masangwa & Another**, Civil Application No. 6 of 2001 and **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Both unreported).

In his explanation to account for the delay, the applicant gave two periods: first period of delay was attributed to the absence of notice of appeal following the struck out of the lodged appeal on 18th June, 2019 to which I have no qualms with. It is on record that, when the applicant was served with the application for execution, the application by the applicant to file an extension of time so as to file the notice of appeal was pending before the Court. As such, the delay in my considered view, was with justification.

Nevertheless, I am disturbed with the second period of delay, that is after the Court granted the applicant 14 days effective 15th May, 2020 within which to lodge an application for stay of execution. The applicant has associated his failure to comply with the order to what he alleged to be refusal by the Registrar to admit his application when he submitted his application on 21st May, 2020 and 26th May, 2020. As rightly argued by the respondents that though the Registrar under Rule 14 (3) and (4) has powers to reject documents which do not comply with the requirement of Rule 12 of the Rules, but he is obliged to do so in writing giving the reason for rejection as well as directing the amendments to be done. In the matter at hand, the applicant has not shown the formal

rejection from the Registrar. Besides, he has not attached the alleged rejected documents by the Registrar for verification.

That apart, Mr. Mbamba submitted to have written a letter to the Chief Justice complaining on the alleged rejection by the Registrar and attached it as annexure GM6 to his affidavit. However, the said letter was not affixed with a receiving official stamp of the office of the Chief Justice to show that it was actually received. But further Mr. Mbamba remained mum as regards to response of the letter.

The above omissions have rendered his submission to be mere unsubstantiated assertions which this Court cannot rely on when considering the grant of extension of time sought.

Mr. Mbamba also has submitted that the 14 days granted by the Court within which to file an application for stay of execution lapsed on 26th May, 2020 but he filed this application on 8th June, 2020 that is after lapse of 12 days to which I consider to be an inordinate delay as rightly argued by the respondents. Yet, the period has not been accounted for.

Though Mr. Mbamba has submitted that the applicant has to re-organize himself in terms of time, finances and other resources before filing the application, but in my view the said blanket and generalised

explanation is unsatisfactory and not convincing as it was not elaborated how has caused the pointed-out delay. Further, as rightly argued by the respondents that financial constraint is not a sufficient reason to warrant the grant of extension of time. **[See: Abdallah Salanga & 63 Others (supra)]**. It is now settled that the applicant has to account for each day of delay to warrant the grant of extension of time sought **[See: Sebastian Ndaula vs. Grace Rwamafa (Legal Personal representative of Joshua Rwamafa), Civil Application No. 4 of 2014 and Tanzania Coffee Board vs. Rombo Millers Ltd, Civil Application No. 13 of 2015, (both unreported) and Ludger Bernard Nyoni vs. National Housing Corporation (supra)**. The Court in **Ludger Bernard Nyoni (Supra)** observed as follows: -

"It is settled that in an application for enlargement of time, the applicant has to account for everyday of delay involved and that failure to do so would result in the dismissal of the application ..."

Flowing from the cited cases, it is my considered view that, the applicant has failed to account for the lapse of 12 days before filing this application, the omission which shows lack of diligence in pursuing this

matter on the part of the applicant. This ground is therefore without merit.

I now revert to the asserted illegality and irregularities in the proceedings and decision of the High Court intended to be stayed and challenged. It is a settled law that where illegality is raised as a ground for seeking an extension of time, such ground amounts to sufficient cause. This stance was stated in **Principal Secretary, Ministry of Defence & National Service vs. Devram Valambia** [1992] T.L.R 185 wherein the Court observed: -

"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight."

The Court has further re-affirmed the stated stance in **VIP Engineering and Marketing Limited & Three others vs. Citibank Tanzania Limited**, Consolidated Civil Reference Nos 6, 7 and of 2006 (unreported) wherein it was clearly stated: -

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 **regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay**"[emphasis added].*

Expounding on the raised illegalities and irregularities Mr. Mbamba has, at paragraph 7 of his affidavit listed the same contending that, the proceeding of Land Case No. 297A of 2009 has been changing hands of the presiding Judges without assigning reasons for the change. He further deposed that the judgment intended to be stayed did not cite the proper names of the parties involved in the suit. Further that by imputing fraud in the process of issuance of the Tittle Deed on the Government officials dealing with land allocation, the said authorities were condemned unheard. As earlier stated, the respondents did not address this ground.

I am aware that, as a single Justice, I am not expected to dig deep into the matter as the applicant need not prove it at this junctive. However, at a glance, there seem to be issues of illegalities and irregularities which justify the grant of the prayer of the extension of

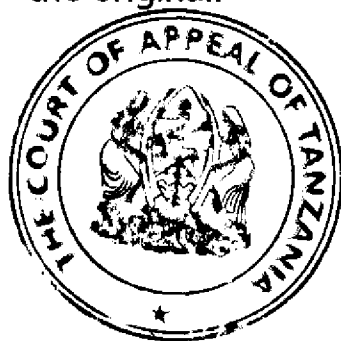
time sought by the applicant. In the circumstances therefore, I hereby grant the prayer for extension of time to apply for an order of stay of execution as prayed. It is further ordered that the applicant shall lodge the said application within 14 days of the delivery of this ruling.

Costs to be in the cause.

DATED at DAR ES SALAAM this 19th day of May, 2022.

L. G. KAIRO
JUSTICE OF APPEAL

The Ruling delivered this 24th day of May, 2022 in the presence of Mr. Masuna Gabriel Kunju, hold brief for Mr. Samson Mbamba and all the respondents appeared in persons, is hereby certified as true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL