

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 54/01 OF 2022

OILCOM (T) LIMITED.....APPLICANT

VERSUS

PAYAS R. MOREMI & GENEVEVA KILIBA

T/A BETTER LIFE INVESTMENT.....RESPONDENT

**(Application for extension of time to file notice of appeal from the decision
of the High Court of Tanzania at Dar es Salaam)**

(Kakolaki, J.)

dated the 6th day of November, 2020

in

Civil Case No. 83 of 2017

.....

RULING

8th February & 13th March, 2024

KIHWILO, J.A.:

In this application the applicant, by way of notice of motion filed on 14th February, 2022 predicated on rule 45A (1) (a) and (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules) is seeking enlargement of time within which to lodge notice of appeal against the decision of the High Court of Tanzania at Dar es Salaam (the High Court) dated the 6th November, 2020 in Civil Case No. 83 of 2017 (the suit). The application is by way of notice of motion and is supported by the affidavit duly affirmed

by Fuad Omar Mbarak. In addition, the applicant has filed list of authorities to support its quest. The respondent did not file affidavit in reply, however, when the application was called for hearing the counsel for the respondent resisted the application in his oral argument.

The background giving rise to the instant application may be abbreviated as follows. The respondent instituted a civil suit before the High Court against the applicant and another person not part to this application, alleging that the applicant illegally and unlawfully breached a lease agreement in respect of the applicant's property described as Plot No. 96 Chang'ombe/Nyerere Road, Tememe District, Dar es Salaam Region. In that suit, the respondent claimed among other things, declaration that the applicant's act of breach of lease agreement without notice or good cause is illegal and unlawful, payment of specific damages to the tune of TZS. 353,034,311.25. Upon hearing the suit, the High Court on 6th November, 2020 decided the matter in favour of the respondent and ordered the applicant to pay among other things TZS. 100,000,000.00 as general damages. Unamused, the applicant on 11th March, 2021 lodged Miscellaneous Application No. 111 of 2021 before the High Court seeking for enlargement of time within which to lodge a notice of appeal which could not be lodged in time. Yet, this application met a dead end as

the High Court on 31st January, 2022 dismissed it on account of being devoid of merit.

It is on the basis of that backdrop that the instant application was lodged before this Court on 14th February, 2022 seeking enlargement of time within which to lodge a notice of appeal as a second bite. The application is rooted in one ground only stated in Paragraph 4 of the accompanying affidavit. Briefly, it is averred that:

"4 The applicant is still dissatisfied with the decision of the High Court of Tanzania which rejected the application for extension since the judgment sought to be appealed against is tainted with illegalities and irregularities as follows;

- i. It awarded general damages to the respondent a total amount of TZS. 100,000,000.00 after failing to prove his specific claims without assigning any reasons.*
- ii. The lease agreement had expired by the time the civil suit was instituted hence the respondent had no locus to institute the case as the lease was for a period of one year from 01/08/2016 to 31/07/2017 and the purported eviction was said to be done on 23/10/2017.*
- iii. The loan received from NMB and Equity Bank claimed to be the center of respondent's*

claims do not have connection with the case involving breach of lease agreement as the loan was advanced in 2012 when the lease agreement was not in place, the lease was for one year from 01/08/2016 to 31/07/2017”.

Mr. Ramadhani Karume who was assisted by Mr. Hamis Mikidadi both learned counsel appeared representing the applicant and presented an oral argument highlighting the averments in the affidavit. He premised his oral arguments by praying to adopt the notice of motion and the supporting affidavit. The learned counsel then proceeded to argue that the instant application was lodged within the time prescribed by rule 45A (1) of the Rules.

Relying on the accompanying affidavit, Mr. Karume traversed through what he considered to be critical facts of the instant application. Particularly, he referred to me Paragraph 4 of the accompanying affidavit to be the epicenter of the application and cited the case of **Serengeti Breweries Limited v. Hector Sequeiraa**, Civil Application No. 373/18/2018 (unreported) in which the Single Justice of this Court considered an application which raised a point of illegality of the impugned decision of the High Court which was the basis for granting extension of time. He then entreated me to grant the application for enlargement of

time to lodge the notice of appeal on the basis of the ground of illegality as stated at Paragraph 4 of the supporting affidavit.

Conversely, Mr. Paul who did not lodge any affidavit in reply, sturdily resisted the application and very briefly contended that, what has been argued as illegalities by the applicants' counsel are actually not illegalities but rather they are grounds suitable for determination on appeal and not in the instant application. Elaborating, the learned counsel submitted that illegalities are matters such as jurisdiction and issues of limitation but not the once raised by the applicant. In his view, illegalities must be apparent on the face of the record and should not be discovered by long drawn argument or process. Reliance was placed in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) which was referred to by the learned counsel for the applicant at page 10 of the **Serengeti Breweries Limited** (supra). He wound up his address by praying that the application is incompetent and therefore, it should be dismissed.

In rejoinder submission, Mr. Karume reiterated his earlier submission. He took the view that, the illegalities referred to by the

applicant are apparent on the face of record and constitute a point of sufficient importance.

I have closely examined and considered the notice of motion, the accompanying affidavit and applied my mind to the oral arguments by the learned trained minds. Needless to say, extension of time is not automatic. It is within the discretion of the court to grant or refuse. The discretion must, however, be judiciously exercised and on materials before the court. As a matter of general principle in order for the applicant to succeed to prompt the court to exercise its discretion to enlarge the time in an application of this nature, the applicant must bring to the fore good cause for the delay. There is, a litany of authorities in this regard, but to mention a few **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) and **Kalunga and Company, Advocates v. National Bank of Commerce Limited** [2006] T.L.R. 235.

In an attempt to exercise my discretion judiciously in the instant application, I have directed my mind to the notice of motion and the accompanying affidavit whose sole ground for seeking enlargement of time is found at Paragraph 4 of the applicant's affidavit in which the applicant avers that the impugned decision of the High Court is tainted with illegalities and irregularities. The one million dollars question to ask

myself is, whether the application raises a point of illegality of the impugned decision of the High Court that is of sufficient importance and that is manifest on the record.

It is evident from the record that all what is complained of by the applicant at Paragraph 4 of the companying affidavit to be points of illegalities and irregularities do not qualify the criteria set by case law, in the contrary these are grounds suitable for determination on appeal and not in the instant application, I will explain. The applicant has raised three issues as illegalities and irregularities worth consideration by the Court. **One**, the complaint that the High Court awarded general damages to the tune of TZS. 100,000,000.00 after respondent's failure to prove specific damages, **two**, the respondent had no locus standi at the time of lodging the suit because the lease agreement had long expired; and **three**, the loans from NMB and Equity Bank which were advanced in 2012 and were the basis of the respondent's claims did not have any bearing in the dispute on the lease agreement which was executed in 2016 and expired in 2017.

In my view, I find considerable merit in the submission by the learned counsel for the respondent in that the above do not raise a point

of illegality of the impugned decision of the High Court that is of sufficient importance and that is manifest on record.

It bears reaffirming that, the law is settled and clear in this jurisdiction that, where an issue of illegality is raised as a reason for applying extension of time, such reason amounts to good cause. There is, in this regard, a considerable body of case law. See, for instance, **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) T.L.R. 182. Corresponding observations were made in the case of **VIP Engineering and Marketing Limited and Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported).

However, it is, not insignificant to emphasize what was stated in the case of **Lyamuya Construction Company Limited** (supra) that such allegation of illegality by itself must be apparent on the face of record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process.

Looking at the three issues raised by the applicant, they don't fall within the four corners of the principle enunciated in the case of **Lyamuya Construction Company Limited** (supra), since they are not apparent

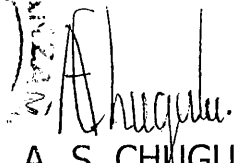
on the face of the record, but rather they involve a long drawn argument or process for them to be discovered as such these are mere grounds of appeal.

To that end, I must conclude that the applicant has not demonstrated any good cause that would entitle it extension of time. In the result, this application fails and is, accordingly, dismissed with costs.

DATED at ARUSHA this 11th day of March, 2024.

P. F. KIHWELO
JUSTICE OF APPEAL .

The Ruling delivered this 13th day of March, 2024 in the presence of Mr. Pascal Bitegela, learned counsel for the applicant and in the absence for the respondent, is hereby certified as a true copy of the original.



A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL