IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: NDIKA, J.A., RUMANYIKA, J.A., And MURUKE, J.A.)

CIVIL APPEAL NO. 49 OF 2021

BASHIR ALLY..... APPELLANT

VERSUS

ANYEGILE ANDENDEKISYE MWAMALUKA..... 1ST RESPONDENT

EDINA ANYEGILE MWAKAJINGA.....2ND RESPONDENT

THE REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI.....3RD RESPONDENT

(Appeal from the Decision of the High Court of Tanzania, at Mbeya)

(Ndunguru, J)

dated 8th August, 2019

in

Misc. Civil Application No. 82 of 2018

.....

JUDGMENT OF THE COURT

5th & 16th February, 2024

RUMANYIKA, J.A.:

Before the High Court of Tanzania at Mbeya, Bashir Ally, the appellant, was refused an extension of time within which to assail the decision which was handed down on 16/12/2017 by the District Land and Housing Tribunal for Mbeya at Mbeya (the DLHT) in Land Application No. 51 of 2014. Being dissatisfied, he is appealing before the Court with four grounds (inclusive of one additional ground). We take the liberty of paraphrasing them as follows for convenience;

1. *That, the High Court Judge erred in law and fact in not holding that failure of the DLHT Chair to sit with aid of assessors resulted to an illegality of the resultant judgment which constituted a sufficient ground for extension of time.*
2. *That, the High Court Judge erred in law and fact in dismissing the appellant's application for being time barred as the appellant could not have lodged an appeal without being supplied with a copy of the impugned judgment.*
3. *That, the High Court Judge erred in law and fact by denying the appellant an extension of time despite sufficient reasons showed.*
4. *That the learned trial Judge erred in law and fact by holding that the appellant should have accounted for every day of the delay from 15/03/2018 to 26/10/2018 as the cutoff point.*

At the hearing of the appeal, Ms. Jalia Hussein Nyamoga, learned counsel, represented the appellant whereas the respondents were represented by Mr. Kamru Habibu Msonde, learned counsel.

Upon adopting the appellant's written submission filed on 11/02/2021, on the first point of grievance about the issue of illegality of the impugned decision, Ms. Nyamoga asserted that, upon the Chair of the

DLHT concluding the hearing of the case, he did not invite assessors to give opinion nor were their respective opinions considered in the judgment. The omission, she contended, contravened the law resulting to an incurable irregularity which constituted a sufficient ground for extension of time. To reinforce her point, Ms. Nyamoga cited our decisions in **Principal Secretary, Minister of Defence and National Service v. Devram Valambhia** [1999] T.L.R 189 and **The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe And 4 Others**, Civil Application No. 191/06 of 2019 [2019] TZCA 516 (6 December 2019: TanzLII).

On the 2nd ground, he blamed the DLHT for its failure to notify the appellant of the date of judgment, contrary to Order XX rule 1 of the Civil Procedure Code, Cap.33. It was submitted that, the judgment was not delivered until close to ten months on 16/12/2017 without notice, instead of 14/02/2017 which was previously communicated to the parties. The learned counsel therefore asserted that the appellant received the copy late without which he could not have lodged an appeal.

Regarding the 3rd ground which concerns alleged failure of the High Court Judge to exercise his discretion properly and find that there was no

sufficient reason shown by the appellant, Ms. Nyamoga contended that what amounts to sufficient reason is relative and the Judge should have observed it.

With regard to the 4th ground concerning the learned High Court judge holding that the appellant should have accounted for each day of the delay from 15/03/2018 to 26/10/2018 when he filed the said futile application, Ms. Nyamoga asserted that, by holding so the Judge mistook the cutoff point dates. Since the appellant had not yet received a copy of the requisite impugned judgment for preparation. Ms. Nyamoga rounded up by asking the Court to allow the appeal with costs.

In reply, Mr. Msonde adopted the 1st and 2nd respondent's written submission filed on 25/03/2021. However, the 3rd respondent did not file written submission. Responding to the 2nd and 4th grounds of appeal, Mr. Msonde contended that the issue of late supply of the copy of judgment causing the appellant's delay is unfounded and a lie. Because, he asserted, on 15/03/2018 the appellant successfully applied for perusal of the record as averred at paragraph 5 of the affidavit which supported the said futile application for extension of time thus, implying that the applicant got a copy of it then. With such a lie, the learned counsel contended, the entire

affidavit is liable to be disregarded. He cited an unreported decision of the Court in **Ignazio Mesina v. Willow Investments**, Civil Application No. 21 of 2001 to substantiate his point.

Mr. Msonde urged the Court to dismiss 3rd ground as the appellant neither showed sufficient ground nor accounted for each day of the delay, as rightly held by the High Court Judge.

As regards the 1st ground on the alleged illegality of the impugned judgment, Mr. Msonde contended that the complaint is an afterthought thus liable to be dismissed, for it was not raised before the High Court for determination. To support his point, he cited the Court's decision in **Amos Masasi v. Republic** (Criminal Appeal No. 280 of 2019) [2020] TZCA 1906 (17 December 2020: TanzLII). Further, he contended that there could be no room for the appellant to bring in any afresh ground for extension of time except in a second bite application which is not the case in this appeal.

Having considered the parties' written submissions, the authorities cited and the learned counsel's contending arguments, the issue now arising before us for determination is whether there was sufficient cause for the appellant to be granted an extension of time sought.

In refusing him an extension of time which is the subject of the present appeal, the High Court Judge in his ruling stated:

> *...As already noted above that the court...the applicant became aware of the judgment on 15/03/2018,* ***the applicant was duty bound to account for every day of delay from 15/03/2018 to 26/10/2018 when filed this application....***
>
> ***....it cannot be said with certainty that the applicant has demonstrated sufficiently that good cause exists*** *to enable this court to exercise its discretion to grant extension of time...* [Emphasis added]

We wish to point out at this juncture, that the law applicable in applications for extension of time is so settled that in determining those applications, powers of the court are broad exercisable with discretion of the presiding judge. Equally important to note is that it is a settled law that there is no universal definition of what is good cause or sufficient ground as the bottom line for the grant of such applications. It all depends on the obtaining circumstances of each particular case and the material presented before the court. Equally, it is a trite law that in considering to granting an extension of time among the factors to be considered are; the length and the reasons for delay. Moreover, in **The Principal Secretary Ministry of**

Defence and National Service (supra) and a plethora of the courts' decisions we observed that illegality of the impugned decision constitutes sufficient ground for the grant of an extension of time, even if each day of such delay is not accounted for.

We recall that the 1st ground of appeal concerns a complaint on illegality of the impugned judgment, that the DLHT's chair in the respective proceedings sat without the aid of assessors. We do not find merit in it, we are mindful that it is trite law that an illegality of an impugned decision alone constitutes a sufficient ground for extension of time, even if each day of the delay is not accounted for.

In this regard, we have examined the impugned decision of the DLHT on the alleged issue. In our considered view, the alleged complaint is not manifest on the decision and that it cannot be ascertained or established without a long drawn argument – see **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

The 1st ground of appeal is unmerited and dismissed.

The 2nd ground of appeal is about the alleged belated supply of copy of the impugned judgment causing the appellant's delay. With respect, we

don't see if this point needs to take much of our time and energy. We have considered the appellant's depositions at paragraph 3(d) of the supplementary affidavit presented before the High Court, his letter requesting for perusal of the DLHT's record and the copy of exchequer receipt issued therefor (at pages 50, 47, and 48 of the record of appeal) respectively. Equally, we have considered the appellant's depositions at paragraph 5 of his substantive affidavit filed in the High Court on 26/10/2018. From the foregoing, we are settled in our mind that the appellant's complaint is nothing but a palpable lie. In fact he became aware of the impugned proceedings and judgment when he perused the record of the DLHT on 15/03/2018 and not 22/10/2018 when he was served with the respective notice of execution. It would have been a different scenario in our considered view, which is not the case here, if the appellant complained that he perused the records on 15/03/2018 but did not find the copy therein.

Moreover, the consequential legal effect of making false depositions in an affidavit cannot be overstated than what the Court did, about twenty-two years ago on 27/02/2002 in **Ignazio Messina** (supra). The Court has reiterated that proposition in a plethora of its decisions to that effect. The effect is to expunge that affidavit. And once the affidavit is gone, nothing

would remain. It renders the entire purported affidavit inconsequential. For more clarity, in **Ignazio Messina** (supra) the Court held;

> *"...An affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support an application. False evidence cannot be acted upon to resolve any issue..."*

The above observed along with that legal proposition, the appellant's untruthful account about when exactly he became aware of the judgment, with which he associated the delay, it would suggest that his delay was no accident but by design.

With regard to the 4th point of grievance, we wish to reiterate our long standing proposition that the threshold for granting an extension of time is that the applicant has to account for each day of the delay however slight the delay may be. See- for instance, our decisions in **Juma Shomari v. Kabwere Mambo** (Civil Application No. 330/17 of 2020) [2021] TZCA 63 (4 March 2021: TanzLII) and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 04 of 2014 (unreported).

Applying the proposition above to the present case, and for the reasons shown earlier on, we find without any difficulties, as the High Court Judge rightly did, that the appellant miserably failed to account for

each day of the delay between 15/03/2018, when he became aware of the judgment upon perusing the records of the DLHT and 26/10/2018, when he lodged the application for extension of time whose refusal gave rise to the present appeal. Equally, the 2nd, 3rd and 4th grounds of appeal fail.

In the upshot, we dismiss the appeal in its entirety with costs.

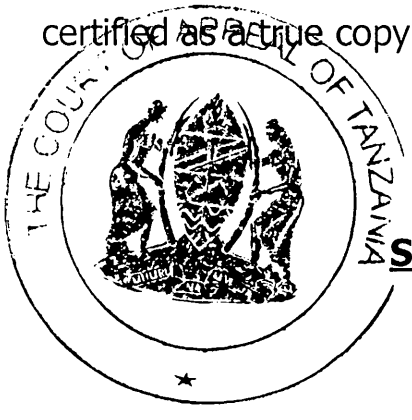
DATED at **MBEYA** this 16th of February, 2024.

G. A. M. NDIKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

Z. G. MURUKE.
JUSTICE OF APPEAL

The Judgment delivered this 16th day of February, 2024 in the presence of Mr. Ibrahim Athuman holding brief of Jalia Hussein, learned counsel for the Appellant and who also holding brief of Mr. Kamru Habib, learned counsel for the 1st, 2nd and 3rd for the Respondents is hereby certified as a true copy of the original.



E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL