

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 104 OF 2020**

RAMADHANI BAKARI MKAMA..... APPLICANT

VERSUS

JUMA KIMARIO.....1st RESPONDENT

JOHN JULIUS MASA.....2nd RESPONDENT

UAP INSURANCE TANZANIA LTD.....3rd RESPONDENT

(From the decision of court of Resident Magistrates of Dar- es salaam at Kisutu)

(Ally- Esq, SRM.)

Dated 7th October 2019

in

Civil Case No. 126 of 2018

RULING

13th April & 1st July 2021

Rwizile, J

By chamber application supported by an affidavit of Ramadhan Bakari Mkama, this application was filled. It is filed under section 14(1) of the law of Limitation Act, [Cap 89 R.E 2019]. The applicant is praying for;

- 1. This court to grant the applicant leave to file an application for revision out of time in order for this honourable court to call for the*

records and check the legality of the proceedings and findings of Kisumu Resident Magistrates Court.

2. Any other and further reliefs this court may deem fit and just to grant.

In the affidavit sworn by the applicant, he averred that the reason for delay to file application for revision is because he was seriously sick. He averred also that; he seeks leave to file revision out of time due to irregularities which tainted the ruling of the trial court.

At the hearing, the applicant was not represented. The first and second respondents did not enter appearance or file counter-affidavits. The case was therefore heard ex parte against them. As for the third respondent, she was represented by Mr Kidifu learned advocate of BM Attorneys.

It was the applicant's argument in support of the application that, the cause of delay to file revision in time was due to his sickness. He said, he was involved in the accident which incapacitated him and hence this delay. He asked this court to find support in the case of **Richard Mgala and 9 others vs Aikael Minja and 4 others**, Civil Application No. 160 of 2015 (unreported).

He argued further that, he seeks leave to file revision out of time, because he noticed irregularities in the ruling of the trial court. He said, since the trial magistrate dismissed Civil Case No. 126 of 2018, for the unjustifiable reasons, it is therefore that, there is a point of law to be determined by this court. To support this assertion, he cited the case of **Monica Ntamakare Jigabha vs Mugeta Bwire Bhakome and Hawa Salumu**, Civil Application No. 487/01 of 2018. He therefore prayed for this court to grant him extension of time to file revision out of time.

This application is vehemently disputed by the 3rd respondent who submitted that, the applicant did not show sufficient cause for the delay. He stated that no proof whatsoever was procured by the applicant that, he made some follow up on his case. He added that, the applicant's claim that he was late due to sickness, is an unjustifiable, since there is no medical report was adduced, he referred to the case of **Christina Alphonse Tomas (as Administratrix of the late Didass Kasele) vs Saamoia Masingija**, Civil Application No. 1 of 2014.

Mr Kidifu further stated that, the applicant's delay was caused by his negligence. His stance is found in the case of **Lyamuya Construction Company Lt vs Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010. The learned advocate argued further that; the applicant did not show what irregularity he is referring to. He also said, revision which the applicant seeks, is not a proper remedy for challenging a ruling of the trial court. According to him, the applicant was supposed to appeal against the same.

He referred this court to the case of **Said Yakut and 4others vs Feisal Ahmed Abdul (administrator of the Estate of the late Ahmed Abdul)** Civil Application No. 4 of 2011, where the court of appeal held, if a party has the right of appeal, he cannot properly move the court to use its revisional powers. It was his argument that, there is no illegality for this court to grant the order that is sought. He therefore prayed for this court to dismiss this application with costs.

In re-joining, the applicant reiterates what he submitted in chief by stating that, since he was involved in the accident and was seriously injured to the extent that he was unable to move.

He said his brother who helped him with court issues was not available all the time. This, according to him caused his delay in applying for revision in time. He added that, he believes that the presiding magistrate did not properly handle his case. He still prayed for this court to grant extension of time to file revision out of time.

After considering the contending submission of the parties, the question to be determined is whether this application is competent before this court. To begin with, it is on record that, the ruling which the applicant is seeking to be revised was delivered on 7th October 2019 and this application was filed on 4th March 2020. It is after 5 months.

The law of limitation Act [Cap 89 R.E 2019] under Part III item 21 provides for 60 days for the application which its limitation is not prescribed by the law. It is crystal clear therefore, that the application is out of the prescribed time. However, under section 14(1) of the same Act, it provides for extension of time upon sufficient cause. The provision states;

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

It is from the foregoing section where the question to be determined would be, whether the applicant has shown sufficient cause.

As stated by the Court of Appeal in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, that;

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse extension of time may only be granted where it has sufficiently established that the delay was with sufficient cause"..

Answering the said question, I have to refer to the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). In which principles to follow on whether to extend time were stated by the court as hereunder;

- i. The delay should not be inordinate;*
- ii. The Applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged*

Coming to this application, I must say, I agree with the applicant that sickness may be a sufficient cause for delaying a case, since no one can predict or control sickness. However, the same should be proved by evidence.

Still, as submitted by Mr. Kidifu, the applicant ought to have shown what irregularity he is referring to, for this court to extent time to revise. Stating

that, there is an irregularity on the face of the record without stating what was the same, does not in my view offer or prove sufficient cause to grant the application. It therefore goes without saying that, the applicant did not show sufficient cause for the delay as far as proving his sickness is concerned.

Subsequently, the issue as to whether this application is competent before this court can be answered in the negative.

After going through the ruling which the applicant is seeking to be revised, I can say the same is appealable. I say so because, despite the fact that it is a ruling on a preliminary objection which finalised the whole suit, still the said ruling in my view, was not tainted with clear irregularity or illegality for it to be revised. Reference is made to section 79 of the Civil Procedure Code, [Cap 33 R.E 2019] which states inter alia that;

*79.-(1) The High Court may call for the record of any case which has been decided by any court subordinate to it and **in which no appeal lies thereto**, and if such subordinate court appears-*

(a) to have exercised jurisdiction not vested in it by law;

(b) to have failed to exercise jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

For the foregoing, the applicant was obliged to show **one**, if the trial court has exercised jurisdiction not vested to it, or , **two**, if it failed to exercise

*jurisdiction vested to it and **three**, has acted illegally or with material irregularity when exercising its jurisdiction.* But it is unfortunate that, nothing was shown or stated by the applicant.

It is my considered view that, the applicant ought to have applied for extension of time to appeal against the said ruling and not application for leave to file revision out of time. I definitely agree with Mr. Kidifu, and decision of the Court of Appeal in the case of **Said Ali Yakut (supra)** at page 7 where the court held that;

In the instant case it is common ground that the applicants have a right of appeal. They have therefore an alternative remedy provided by the law, that is to file an appeal to this court. It is our considered view that, where the party has the right of appeal, cannot properly move the court to use its revisional jurisdiction...

This application has no merit, it is hereby dismissed with no order as to costs.

AK. Rwizile
Judge
01.07. 2021



Recoverable Signature

X

Signed by: A.K.RWIZILE

