

**IN THE HIGH COURT OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISC. CIVIL APPLICATION NO. 48 OF 2020

ELIBARIKI LORRY.....APPLICANT

VERSUS

NDOVU ADVENTURE LTD.....REPOENDENT

RULING

14/07/2021 & 20/07/2021

KAMUZORA, J.

This application was brought under the provision of section 14 of the Law of Limitation Act Cap 89 RE 2002. The applicant applied before this Honourable Court for extension of time to file petition challenging the removal of the applicant from the directorship in the respondent's company. The application was supported by the affidavit of the applicant which the counsel for the applicant craved to be adopted and form part of his submission.

On the date scheduled for hearing, the respondent did not appear and no reasons were brought before this court to justify their failure to enter appearance. Thus, the hearing of this application proceeded in the absence of the respondent and the applicant was well represented by Mr. Dancan Oola, learned counsel.

In his submission in support of the application, the counsel for the applicant started with a brief history of the matter leading to this application. He submitted that, the applicant was among the directors of the Ndovu Adventure Ltd, the company established under the laws of this land. That, the applicant was sole director since the company was formed via a certificate of registration of the said company dated 8th of October 2013. That, sometimes in April 2016, the applicant received a notice of call of shares from the secretary of the respondent whereby he was required to pay 51 of his shares. That, it was alleged that the respondent in its ordinary meeting passed the resolution and in July 2016, the applicant shares which were 51 worth one million each were forfeited by the respondent. That, the resolution of the Board also appointed one Gidion Makara to be a director and got allotment of shares which were being held by the applicant. That, the applicant alleges not to have been given opportunity of being heard and that the allotment of shares which was done to Gidion Makara was so done fictitiously and maliciously to deny the applicant his right in the said company being the founder and the majority shareholder.

The counsel for the applicant submitted further that, the meeting which terminated the applicant from his position as among the directors of the respondent's company was done without affording him an opportunity to be heard which is contrary to Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977. That, because of the denial of the constitutional right, the applicant was forced to file several suits and applications in the courts of law since 2016. The counsel pointed out the application filed before the district court of Arusha on 29th July 2016, that was struck out on 21st of October 2016 for being wrongly filed

against the Director only without joining the company. He also pointed out Civil Case No. 31 of 2017 filed against the Directors of the said company at Resident Magistrate Court of Arusha that was also struck out followed with Civil reference No. 3 of 2018 before the High Court, Mwenempazi J. That, the applicant in the race of seeking for the court intervention filed another Civil Case No. 23 of 2017 in this court and his Lordship Mwenempazi J, on 31st July 2019 ruled out that the matter was time barred as it was filed 30 days out of time. Mr. Duncan explained the basis for mentioning the above cases filed as the intention to show that the applicant was not idle on following his right on the alleged dismissal.

Citing the case of **Principal Secretary, Ministry of Defence and National Service Vs Deveram Valambia (1992) TLR 182** at page 189 the counsel for the applicant contended that, where illegality is established, it becomes the basis for the grant of extension of time. He was of the strong view that, the right to be heard if abrogated is a grave illegality of which he prayed to be considered in granting the application for extension of time.

The counsel for the applicant concluded that, the intended suit is governed by section 73 (2) and (6) the Companies Act, Act No 12 of 2002 which gives 30 days' time limit within which to file a suit against abrogation of rights similar to the intended suit. That, the present application was brought under the Law of Limitation Act which allows the court to extend time to file the petition in court. Standing on those premises, Mr. Duncan asked this court to look into the law and grant this application for extension of time with costs.

Having gone through the application and submission made by the counsel for the applicant it is important to see if the requirement of the law was met to warrant the grant for the extension of time. This application was brought under the provision of section 14 of the Law of Limitation Act. Subsection 1 of section 14 is a specific provision dealing with extension of time. For purpose of convenience the said section is reproduced here under;

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.

The above provision specifies application or appeal as matters to which the extension can be preferred to and the need to show reasonable or sufficient cause. In the present matter the applicant intends to file a petition by virtue of section 73 (2) and (6) of the Companies Act, Act No 12 of 2002. Under subsection 2 of the above section, an application can be filed by way of petition within thirty days from the date the consent or resolution was passed. The applicant was unable to file the petition under section 73 on time and preferred the present application for extension of time. Now the question is whether the applicant has complied to the legal requirement.

It is important to note that under section 14 of the Law of Limitation Act, it is a requirement for the applicant to show to the court that there is reasonable or sufficient cause warranting the extension of time sought. In **Tumsifu Kimario, Administrator of the estate of the late Elia Kimaro Vs Mohamed Mshindo Civil Application No. 28/2017 CAT at Dar es salaam**, (unreported) Hon. Ndika, Justice of Appeal held that, *"Although the court has power to extend time it can only be exercised if good cause is shown"*. Thus, having jurisdiction to grant extension of time goes in hand with exercising such powers judiciously upon good cause being shown by the applicant. The Court of Appeal in **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)** listed down the guidelines for the grant of the extension of time to wit;

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as the existence of point of law of sufficient importance; such as the illegality of the decision sought to be challenged (Emphasis added)***

In the present application, the counsel for the applicant, Mr. Duncan Oola based his argument on the point of illegality that the applicant was

denied a chance of being heard by the respondent's company before issuing resolution of his removal from directorship. That was also pleaded in the applicant's chamber summons supported with an affidavit. This line of argument is supported by a number of authorities which insisted that, where illegality is pleaded, it becomes important that the extension of time be granted. In this, I refer the authority cited by the counsel for the applicant, **Principal Secretary, Ministry of Defense and National Service Vs Devram Valambhia [1992] TLR** where it was held that: -

"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."

But it must be noted that, where illegality is pleaded it does not create automatic way for grant of extension of time. Other relevant factors as listed in **Lyamuya Construction (supra)** has to be considered as well. In other words, the applicant claiming illegality must also show that, the delay was not inordinate by accounting all the period of delay and by showing diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

From the submission by the counsel for the applicant, the law governing the intended suit is section 73 (2) and (6) the Companies Act which reads;

73(2). An application under this section shall be made by petition within thirty days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

The above cited provision gives the intensive period of thirty days for a party challenging variation of shares to file an application by way of petition within 30 days from the date of the consent or resolution. It was contended by the counsel for the applicant that the applicant was not stagnant as he was trying to pursue his right by filing different suits and application thus proving that the applicant acted diligently. However, the records speak otherwise as the last applicant's attempt in pursuing his right was by filing Civil Case No. 23 of 2017 which its decision was delivered on 31st July 2019. The present application for extension of time was filed in court on 2nd June 2020 as per exchequer receipt No. 25342161. Counting from 31st July 2019 to 2nd June 2020 it is almost 10 months and the applicant did not account for 10 months delay. It is a settled principle that, the applicant praying for extension of time must also account for all days of delay. In **Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (Unreported)** and in **Interchick Company Limited vs Mwaitenda Ahabokile Michael, Civil Application No. 218 of 2016** the Court of appeal was clear that a delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.

In the present application, the applicant did not act diligently in pursuing his right as he failed to explain reason for the delay after the decision in Civil Case No. 23 of 2017 was made. The applicant was unable to establish good and sufficient reason to grant this application. I therefore proceed to struck out the application with no order as to costs since the same was heard ex-parte.

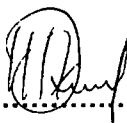
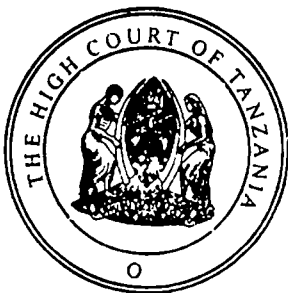


D.C. KAMUZORA

JUDGE

20/07/2021

COURT: Ruling delivered this 20th Day of July 2021 in the presence of Mr. Jeff Sospiter holding brief for Mr. Dancan Oola for the Applicant. Right to appeal clearly explained.



D.C. KAMUZORA

JUDGE

20/07/2021