

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPLICATION NO. 07 OF 2021

(Originating from Land Case No. 02 of 2010 Sumbawanga High Court)

**BUSAD IBRAHIM (Administration of the estate of the
late Issa Mohamed) APPLICANT**

VERSUS

**TREASURY GENERAL (FORMERLY CONSOLIDATED
HOLDING CORPORATION) 1ST RESPONDENT**
VIOVENA & CO. LIMITED 2ND RESPONDENT
GODWIN E. NZINYANGWA 3RD RESPONDENT
WEMA J. LUMULIKO 4TH RESPONDENT
GRACE H. LUMULIKO 5TH RESPONDENT
NEHEMIA PANYA 6TH RESPONDENT

RULING

Date of last order: 23/09/2022

Date of Ruling: 29/09/2022

NDUNGURU, J.

The applicant has filed this application seeking for the following orders:

- (a) Extension of time be granted to the applicant to file a notice of appeal to the Court of Appeal of Tanzania against the judgment of Hon. K.M. Nyangarika, J dated 4th day of December, 2015.

- (b) A letter applying for judgment, decree and proceedings in (a) above be served to the respondents out of time.
- (c) Costs of the application.
- (d) Any other order this Honourable Court deems fit to grant.

The application is made under section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E 2019 and Section 14(1) of the Law of Limitation Act Cap 89 R.E 2019 and supported by the affidavit of the applicant. The 1st respondent filed an affidavit in reply taken out by Mjahidi B. Kamugisha the State Attorney in the office of Solicitor General at Sumbawanga. Other respondents never appeared in court even after substituted service by publication was done.

At the hearing of the application, Mr, Simon Mwakolo learned Counsel represented the applicant while Mr. Mjahidi Kamgusha, the learned State Attorney from Solicitor General appeared for the 1st respondent. In his submission. Mr. Mwakolo adopted the affidavit of the applicant and submitted that his 16 paragraphs affidavit disclosed not only that he diligently perused the matter but also tried to show that this court's judgment was problematic, and pointing to its illegality. In his view this was a good cause for extension of time.

On the other hand Mr. Kamugisha, learned State Attorney resisted the application by first adopting the affidavit in reply, and submitting

that no good cause has been shown by the applicant to deserve extension of time.

The question is whether the accompanying affidavit discloses a good cause for extension of time. As a matter of general principle, it is in the description of the court to grant or refuse to grant or refuse to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrary. Through authorities in place however; the following guidelines may formulated:

- (i) The applicant must account for each day of delay.
- (ii) The delay should not be inordinate.
- (iii) The applicant must show diligence, and not apathy, negligence as sloppiness in the prosecution of the action that he intends to take
- (iv) If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

See Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No 2 of 2010 (unreported), **Mohamed**

Suleiman Ghona Vs. Mahmoud Mwemus Chitikongu, Civil Application No. 170/01 of 2020.

According to the applicant one of the reasons for delay to file this application within time was due to the fact that at all the time the applicant has been in court premises pursuing the appeal from the date of the judgment of this court on 04/12/2015 to the date when the Court of Appeal struck out the appeal on 21/02/2021. This is contained at para 14 of the affidavit. To me the applicant is trying to arrive and rely on the principle of technical delay. The question is whether technical delay is a sufficient cause to warrant extension of time. From the wisdom of the supreme court of the Land in the case of **Benedict Shayo Vs. Consolidated Holding Corporation as Official Receiver of Tanzania Film Company Ltd** Civil Application No. 336/01 of 2017.

The applicant has also sought condonation for delay to file this application on claims of illegalities in the impugned decision. I am aware that the issue of illegality to the decision being challenged can be another persuasive reason of granting an extension of time. It is trite that such illegality must be reflected in the affidavit supporting the application. See **Mohamed Salimini Vs. The Assistant Registrar of Title & 2 Others** Civil Application No. 31/3 of 2021 (CAT) Unreported). Going through the applicant's affidavit, paragraph 13 of affidavit has

categorically stated the illegalities contained in the judgement intended to challenge.

In the premises, I find the applicant has managed to demonstrate good cause to warrant me exercise the discretion to grant extension of time as prayed. Consequently I grant extension.

The applicant is given 14 days, within which to file the notice of Appeal to the Court of Appeal of Tanzania against the judgment of Hon. K.M Nyangarika, J dated 04th day of December, 2015.

Further the applicant is given 14 (fourteen days) to serve the respondents a letter applying for judgment, decree and proceedings.

No order as to costs because the applicant's application has never been caused by the respondents.

It is so ordered.




D. B NDUNGURU

JUDGE

29/09/2022