

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 292 OF 2022

*(Arising from the decision of Kinondoni District Court in Execution Cause No. 80 of 2021
dated 07/06/2022 before Hon. F.S. Kiswaga SRM)*

JONAS MREMA.....APPLICANT

VERSUS

JANETH ELLY TEMU.....RESPONDENT

RULING

Date of last Order: 11/10/2022

Date of Ruling: 25/11/2022

E.E. KAKOLAKI, J.

Pursuant to section 14 (1) of the Law of Limitation Act, [Cap 89 R. E 2019] (the LLA), and section 95 of the Civil Procedure Code, [Cap 33 R.E 2019] (the CPC) and any other enabling provisions of the law, the applicant herein has preferred this application seeking an extension of time within which to file an application for revision against the ruling and drawn order of the District Court of Kinondoni dated 07/06/2022 in execution Cause No. 80 of 2021. The application is supported by an affidavit deposed by applicant himself. The application is strenuously challenged by the respondent who filed a counter affidavit to that effect.

Briefly as gathered from the affidavit and its annexures, the applicant was respondent/judgment debtor in Execution Cause No. 80 of 2021 before the District Court of Kinondoni following final determination of the Matrimonial Cause No. 11 of 2015, in which the decision was entered in favour of the respondent herein as decree holder by ordering attachment and sale of the matrimonial properties for the respondent to get her shares as decided in Matrimonial Cause No. 11 of 2015. Being unhappy with that decision and believing to be time barred to file an application for revision before this Court after wrongly filing it in two different sub registries of High Court at Temeke and Land Division, the applicant resorted to this course of preferring the present application, seeking extension of time to file the said revision in the proper registry.

On 25th August 2022 when the application was called for hearing both parties appeared unrepresented. By consensus was agreed to dispose of the application by way of written submission, in which both of them complied with the filing schedule orders. It is worth mentioning that the respondent traded under legal aid from People's Development Forum (PDF) in which her reply submissions to the applicant's submission in chief were prepared by advocate Glory K. Kilawe but filed by the respondent herself.

The law under section 14 (1) of the LLA, empowers this court with discretionary powers to extend time to the applicant before or after expiry of the period of limitation prescribed for such appeal or application in which an extension of time is sought for, upon good cause shown. The section 14(1) of LLA, reads:

*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.** (Emphasis supplied)*

When an extension is sought after expiry of time prescribed by the law the applicant is duty bound to account for the delayed days or adduce any other sufficient reason or good cause that prevented him/her from taking action within the specified time. See the cases of **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 and **Mohamed Athuman Vs. R**, Criminal Application No.13 of 2015 (all CAT-unreported). As to what amounts to good cause or sufficient reason there is no hard and fast rules since a number of factors has to be taken into account, including whether or

not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant. See the cases of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001, **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 and **The International Airline of the United Arab Emirates Vs. Nassoror**, Civil Application No. 263 of 2016 (all CAT-unreported). The law is also very clear that even when the days delayed have not been accounted for still the Court can grant extension where the ground of illegality of the decision sought to be impugned is raised and established. See the cases of **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambhia** (1992) TLR 185 and **MZA RTC Trading Co. Limited Vs. Export Trading Company Limited**, Civil Application No. 12 of 2015 (CAT-unreported). It is however to be noted that for this ground of illegality to succeed the same must be apparent on the face of record and not the one to be drawn through a long argument or process as it should be visible. See the cases of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and

Ngao Godwin Losero Vs. Julius Mwarabu, Civil Application No. 10 of 2015 (Unreported – CAT).

And when extension is sought under section 14(1) of LLA prior to expiry of the time prescribed by the law for filing the appeal or application, the applicant is duty bound to give sufficient and/ or reasonable explanations to the Court as to why he/she thinks time will not be enough for him to file the said appeal or application timely. In other words I would say he/she has to tell the reasons preventing or might be preventing him/her from filing the intended appeal or application timely.

With the above understanding and guiding principles I now turn to consider and determine the grounds raised by the applicant inviting this Court to exercise its discretion either to grant the application or not.

Submitting in support of the application after adopting the contents of his affidavit as part of his submission in chief, the applicant informed the Court that soon after delivery of the decision sought to be impugned on 07/06/2022, he immediately applied for the copy of the ruling and drawn order which were availed to him six (6) days before expiry of 30 days from the date of the decision. That upon receipt of the said documents on 04/07/2022 wrongly filed the revision in this Court at Temeke one stop

judicial center before he made another wrong attempt by filing it in the Land Division, as both of them were rejected for want of jurisdiction. The applicant submitted that on noting that he was acting under ignorance of the procedural law and believing to be out of time within which to prefer the intended revision on 13/07/2022 opted to file this application. It is therefore applicant's view and submission that reasons for his delay to file the application for revision timely are two, being one, failure to get a copy of ruling in time and two failure to get timely an online response from the judicial Statistical Dashboard System, JSDDS of Tememe one stop center when he wrongly filed the application so as to meet the time limitation of 30 days for filing the revision application.

That apart, the applicant pleaded the ground of illegality of the decision sought to be impugned on two points as per paragraph 2 of the affidavit. One that there is illegalities and irregularities on the part of the ruling and drawn order sought to be challenged. Secondly, that the execution proceeded despite of the Notice of Appeal to the Court of Appeal and pending objection proceedings. Submitting and expounding on the first point the applicant argued if the application is granted he will bring the following illegalities to the vicinity of this court for revision. One, the legality of Forced

marriage in the laws of Tanzania, second, the legality of enforcement of decree on landed properties purported to have been orally given to parties on the wedding day while its owner denies that fact, third, the validity of decree of divorce on a forced marriage, fourth, the decree of division of matrimonial assets where marriage was forced one and fifth, the legality of exhibits addressed to the presiding Magistrate in a situation where parties are barred from challenging them. As to the second point he had nothing to submit on nor did he produce any document exhibiting existence of an appeal before the Court of Appeal. He was therefore of the submission that the application has merit and is bound to succeed and so prayed to have it granted.

Responding to the applicant's submission, the respondent while adopting the contents of her counter affidavit, sternly resisted the applicant's submission insisting that, this application is another technical delay culculated to deny her right in the matrimonial properties which were granted to her by the court since 25th October 2018, almost 4 years now and that, those matrimonial properties are generating income in which the applicant has continuously enjoyed since their separation on 21st June 2014, more than 8 years now. She contended that, the applicant has no sufficient

reason to warrant this court to grant him extension of time. She said applicant's ignorance of procedural law in filing the application for revision does not constitute good reason for extension of time as he did not act diligently but rather negligently. Relying on the case of **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015 (CAT-unreported) the respondent argued the mere fact that the applicant is a lay person does not excuse him from being accountable as ignorance of law is not an excuse at all. To her, applicant failed to account for 23 days of delay between the day of ruling that is from 7th June 2022 to the date of collecting the ruling on 1st July 2022, as the applicant demonstrated no any effort such as physical follow ups of copy of ruling or even writing reminder letters to be availed with the copies of ruling and drawn order.

Concerning the points of illegality raised by the applicant, it was respondent's submission that the same were supposed to be raised during dissolution of marriage or at the appeal stage and not during execution as the alleged points have no connection with the execution proceedings at all. She argued that, even in the appeal before Mutungi J, the applicant did not raise and itemize such issues in his memorandum of appeal. In her view the application is hopeless, thus should be dismissed with costs, and she so

prayed. The applicant had no rejoinder to make instead prayed the Court to set the ruling date in which his prayer was cordially granted.

I have taken time to examine and consider the affidavit, counter affidavit and submissions for and against this Application. Now the issue is whether in the present application, applicant has advanced good or sufficient cause to warrant this court to grant the prayer for extension of time as per the requirement of the law demonstrated above.

Upon close follow up of the parties submission and their pleadings, it came to my attention that both parties acted on a wrong assumption that the application for revision sought to be filed by applicant upon extension of time being granted, ought to be filed within 30 days of the decision of executing court, meaning 07/06/2022. Item 21 of Part III, to the schedule of the LLA, provides for 60 days within which to file revision against the proceedings under CPC and the Magistrates Courts Act, [Cap. 11 R.E 2019].

In the present application it is undisputed fact that the execution proceedings were conducted under CPC. It is also uncontroverted fact that the ruling sought to be revised was delivered on 07/06/2022 and the copy of the ruling made available for collection on 01/07/2022. Counting 60 days from the date of ruling the applicant was supposed to file his application by 05/08/2022,

and the present application was filed on 13th July 2022 which is 23 days prior to expiry of 60 days which was well within the time for filling the said application. Under the circumstances therefore the applicant is duty bound to explain to the Court as to what prevented or might have prevented him from filing the said revision time. However as it can be noted there is not such explanation as the applicant when preferring this application traded under ignorance of the law believing that the time limitation for filing the revision 30 days while in fact is 60 days. Now the glaring question is whether ignorance of law amounts to sufficient cause for the grant of extension of time. Indeed in answering this query I embrace the respondent's proposition that it is not. The reason is that, it is expected of any prudent and reasonable party not acquainted with the legal procedure to always ask knowledgeable persons to be apprised of it before taking any action as to act otherwise is tantamount to *volent non fit injuria* meaning accepting any the legal consequences to befall him/her. A court of law cannot therefore accept such lame and weak ground. Similar views were aired by the Court of Appeal in the case of **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (CAT-unreported), where the Court had this to say:

*"When all is said with respect to the guiding principles, I will right away reject the explanation of ignorance of the legal procedure given by the applicant to account for the delay. As has been held times out of the number, **ignorance of the law has never featured as good cause for extension of time** (see, for instance, the unreported ARS. Criminal Application No. 4 of 2011 – **Bakari Israel Vs. The Republic**; and MZA Criminal Application No. 3 of 2011 – **Charles Salungi Vs. Republic**.) To say the least, **a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be apprised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness.**" (Emphasis supplied).*

In this matter since the applicant acted on ignorance of the guiding procedural law for preferring the application for revision which is no excuse and since he has nothing to offer that an inference of sloppiness drawn by this Court, I am of the firm view that, the same cannot form the ground for extension of time. Thus the issue is answered in negative.

As regard to the ground of illegality of the decision sought to be impugned, I agree with the respondent too that there is nothing advanced by the applicant to indicate that the alleged points of illegality are connected to the decision sought to be impugned. I so do as the issues of legality of the

alleged forced marriage, disposition of properties allegedly given to parties orally on the marriage day, validity of the divorce decree and division of matrimonial assets on alleged forced marriage and legality of the exhibit addressed during hearing of matrimonial cause, in my considered view cannot form the basis of contest during execution of the decree for being substantive issues which would have been addressed during the appeal, if any was preferred by the applicant against the decision subject of the execution proceedings. In view of the above deliberation, I am convinced and therefore shoulder up with the respondent's proposition that, the applicant has totally failed to establish the ground of illegality of the decision sought to be challenged as the said decision dealt with execution of the decree and not the legality of the decision in which the decree was extracted.

As regard to the second point of illegality, the applicant has also failed to tender any evidence proving that, there is a pending appeal before the Court of appeal and objection proceedings that would disentitle the District Court of Kinondoni to entertain the said execution. As alluded to above and held in **Lyamuya Construction Company Ltd** (supra) and **Ngao Godwin Losero** (supra) illegality of the decision must be visible and not drawn by long argument or process. To sum up in this matter the applicant has failed

to exhibit to the court's satisfaction that, there are illegalities in the decision sought to be impugned calling for attention of this Court to make it good.

All said and done, this application is destitute of merit and the same is hereby dismissed with costs.

Order accordingly.

Dated at Dar es Salaam this 25th November, 2022.



E. E. KAKOLAKI

JUDGE

25/11/2022.

The Ruling has been delivered at Dar es Salaam today 25th day of November, 2022 in the presence of both applicant and respondent in person and Ms. Monica Msuya, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

25/11/2022.

