

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY**

**MISC CIVIL APPLICATION NO. 05 OF 2023**

*(Arising from the Judgement and Decree of Civil Case No. 306 of 1999 by MC Mteite RM dated 21/2/2011 at the resident Magistrate Court of Dar es Salaam at Kisutu.)*

**AMIR. R ABDALLAH .....APPELLANT**

**VERSUS**

**MOHAMED A. WADI..... RESPONDENT**

**RULING**

*1<sup>st</sup> March & 21<sup>th</sup> April 2023*

**MKWIZU, J.**

The applicant is seeking an enlargement of time to file a revision application against the judgment of the Resident Magistrate Court of Dar es Salaam at Kisutu dated 21/2/2011 under section 14 (1) of the Law of Limitation Act (Cap 89 RE 2019). The application is supported by the affidavit by Prostace Kato Zake, the applicant's counsel sworn on 30<sup>th</sup> December 2022.

When the matter came before the court on 1<sup>st</sup> March 2023, Mr. Protace Zake, learned advocate appeared for the applicant and Florence Tesha also learned advocate for the respondents. The application was ordered to proceed by way of written submissions. I thank the parties' counsel for their timely filed written submissions.

Submitting in support of the application, the applicant's counsel said, the applicant was through the impugned decision delivered way back in 2011 declared a rightful owner of Plot No. 842 Block 'H' Mbezi Beach. He later during execution processes, realized that Plot No. 842 Block 'H' Mbezi Beach was also registered as Plot No. 2015 Block 'H' Mbezi. He moved the court for the correction of the decree through Misc. Civil Application No. 93 of 2021 followed by successful revisions No. 2 of 2022 hence the present application for extension of time to file revision of the judgment of the said trial court.

Mr. Zake's contention was that the applicant has all along been litigating prudently in good faith till he discovered an ominous error in the decree. He maintained that the judgment of the trial Court contains serious irregularities, an error that can only be corrected by this court through revision proceedings. To him, the filing of this application was taken immediately on the 8<sup>th</sup> day of July 2021, after the detection of the pointed-out irregularity which is by itself sufficient ground for extending time as per the principles laid down in the **Principal Secretary, Ministry of Defence, And National Service Vs. Devram Valambhia** [1992] T. L. R. 184 and **Transport Equipment Ltd Vs. D. P. Valmbhia** [1993] T. L. R. 91

On the other hand, Mr. Florence Tesha, strongly opposed the application arguing that the extension of time is not an automatic right to the Applicant. It is only granted on the strength of the grounds. To him, the grounds for extension of time advanced in paragraphs 13,14 and 15 of the affidavits do not establish sufficient cause to warrant the grant of the prayers for extension of time contending that the Applicant's Action of filing various applications which were irrelevant, and incompatible is a professional negligence which this court should not take part to condone. He on this relied on the decision of the Court of Appeal in **Calico Textile Industries Ltd. Versus Pyaraliesmail Premji** [1983] TLR 28; **Andrew Opiyo Verus Michael Mashere** [1982] TLR and **Director General PCCB Versus Frank Ipyana, Labour Revision NO. 23 of 2009** (unreported) insisting that lapses caused by the omissions on the part of an advocate do not amount to sufficient cause in order to justify an application for an extension of time.

Condemning the applicant for failing to account for each day, Mr. Florence submitted that the judgment was delivered on 21<sup>st</sup> February 2011 whilst this application was filed on the 09<sup>th</sup> day of January 2023 after a lapse of more than ten years ( 4,000 days) without plausible explanation by the applicant. Refereeing the court to the applicant's claim in the attached

copy of Plaintiff (Annexure ARA1) the basis of the impugned decision, respondent counsel said, allowing the applicant's application would be acceding to the applicant's prayer for the court to rectify the plaintiff and grant unclaimed prayers. He referred the court to the cases of **THA V Mohamed R. Mohamed [2003] TLR 76; Bharya Engineering & Another V. Hamud Ahmed Nassor [2018] TLR 50; William Shija and Another V. Fortunatus Masha [1997] TLR 213, Maneno Mengi Limited and 3 Others v. Said Nyamachumbe & The Registrar of companies [2004] TLR 319 and Mwananchi Engineering and Contracting Corporation V. Manna Investment (Pty) Limited and Another, Civil Application No. 5 of 2006, Laurean Rugaimukamu V. The Editor Mfanyakazi Newspaper and Another CAT (Makame, Samatta, Lugakingira JJA [2001] TLR 79**. He lastly invited the court to find that the Applicant has failed to account for the period from 21<sup>st</sup> February 2011 to 08<sup>th</sup> July 2021, more than ten years.

I have considered the matter and the parties' arguments. The issue which stands for my deliberation is whether the applicant has advanced good cause to warrant the Court to exercise its discretionary power to extend the time within which to file an application for revision. It is settled law that the court can only grant an extension of time if the appellant shows

sufficient cause. This is the import of section 14(1) of the Law of Limitation Act which 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."* (emphasis added)

The Court has in a number of cases, formulated a number of factors to be considered in evaluating whether the reasons given are sufficient or not including an account for all periods of delay; degree of the delay; the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and the existence of a point of law of sufficient importance such as the illegality of the decision sought to be appealed against. See: **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). Thus, to grant an application for enlargement of time, the applicant must avail the court with sufficient material to show that he acted promptly and diligently, the delay is not inordinate and/or points of illegality on the impugned decision.

The key question in this application would therefore be whether the applicant's grounds relied upon by the Applicant are sufficient to warrant this court exercise its discretion to extend time. The applicants' affidavit contains two reasons for the delay. **Technical delay** and **a point of illegality** on the impugned decision.

The impugned decision was delivered on 21/2/2011. The applicant's supporting affidavit narrates a chain of events explaining what transpired from the delivery of the impugned decision to the time of filing this application in court. In terms of the deposed facts, execution proceedings were lodged in 2020 almost nine years after the decision he is seeking to challenge through execution application No. 46 of 2020. It is deposed further that the execution could not be effected due to the variance of the Plot Numbers of the suit property between the judgment and the decree. He resorted to filing an application for correction of errors in the judgment followed by revision No 2 of 2022 delivered on 8th December 2022 with a specific finding that the trial court's decision was in error for not deciding all the issues raised during the trial prompting the filing of this application on 9/1/2023.

However, the sympathetic situation above leaves unaccounted for the period between 2011 when the decision was delivered to 2020 and so a

month period between 8<sup>th</sup> December 2022 to 9<sup>th</sup> January 2023 which is a long period to be ignored by this court.

I would have ended here with a dismissal order if not for the second reason of illegality raised by the applicant. It is settled that, the presence of illegality on the face of the decision sought to be challenged constitutes a sufficient reason for the extension of time even where a delay was not accounted for. See **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, (Supra). Points of illegality are deposed in paragraphs 11,12,13 and 15 of the supporting that:-

*"11. That, this court made a decision in its ruling, Hon Kisanya J dated 8<sup>th</sup> December 2022 to the effect that the trial court's judgment did not answer the issues and make a declaration of its findings capable of extraction of proper executable reliefs...*

*12. THAT, subsequent to the said decision the applicant has no executable decree to enjoy the fruits of his judgment.*

*13. That the judgment of the trial Court contains a serious irregularity on the record, an error supposed to be rectified.*

*15. That, the applicant is now stuck and cannot proceed with his application for execution for want of properly extracted decree from the judgment of the trial Court."*

I have revisited the records, mainly the decision to be challenged, delivered in 2011 in RM Civil Case No 306 of 1999. In that case, the

plaintiff, now applicant had sought to be declared owner of Plot No 843 Block H Mbezi Medium Density in Dar es Salaam which the defendants, (now respondent) had referred to it as Plot No 2015 prompting the framing of an issue on *what is the Plot No. of the disputed area, Plot No 843 Block H. or plot No 2015 Block H Mbezi Medium Density Dar es salaam* by the trial court. And deciding the issue on page 9 of its decision, the trial court said: I quote for convenience and clarity.

*"It is undoubted that the plaintiff is a rightful owner of plot no 843 block H or plot No 2015 block H Mbezi Medium Density Dar es salaam"*

Contrary to the above declarations, the decree crafted therefrom went to declare the plaintiff a rightful owner of the right of occupancy comprising Plot No 843 Block H Mbezi Medium density Dar es Salaam without any mention of the *plot No 2015 block H Mbezi Medium Density Dar es Salaam*. This is the confusion that the applicant is demonstrating that frustrated the execution of the decree. This is, in my view a sufficient point warranting the grant of extension of time to let the pointed-out illegality corrected by the court in a proper forum. My findings are supported by the case of **Principal Secretary, Ministry of Defence & National Service v. Devran Valambia** [1992] T.L.R. 185 where it was held: -



*"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."*

And in **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7, and 8 of 2006 CA (Unreported) wherein it was observed thus:

*"It is, therefore, settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for the extension of time under the rule regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."*

The application is therefore granted. The intended revision is to be lodged in court within 30 days from the date of the delivery of this ruling. Costs to be in the cause. Order accordingly.



**E.Y. MKWIZU**  
**JUDGE**  
**24/4/2023**