

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 26 OF 2022

KHALID HUSSEIN MUCCADAM.....APPLICANT

VERSUS

NGULO MTIGA (As legal Representative of the
Estate of the Late ABUBAKAR OMAR SAID MTIGA).....1ST RESPONDENT

TULIBAKO TABU KYOMA (As Legal Representative
of the Estate of the Late JOHN RAYMOND KYOMA).....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

THE MINISTER FOR CONSTITUTION AND LEGAL AFFAIRS.....4TH RESPONDENT

RULING

Date of Hearing: 03/05/2023

Date of Ruling : 05/05/2023

MONGELLA, J.

In this application, the applicant is seeking for extension of time within which to file an application for leave to file an application for judicial review. The intended application for judicial review is geared at challenging the Order of the Minister for Constitution and Legal Affairs rendered on 29.03.2016. In the said Order, the Minister granted the 1st respondent extension of time to file a suit in this Court. The six months limitation time, as provided under **Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, G.N. No. 324 of 2014**, has already elapsed rendering filing of the application at hand.



The dispute between the parties concerns Plot No. 320 with CT No. 21778, located at Mikocheni "A" area, Dar es Salaam City. The facts on record reveal that the 2nd respondent, being the owner of an adjacent plot, that is, Plot No. 322 under CT No. 186314/102, at the same area, extended to Plot No. 320, the plot in dispute, upon erecting a building. The plot, that is, Plot No. 322 and the extension to plot No. 322 was sold to the applicant way back in October, 2007. The 1st respondent, instituted a suit against the 2nd respondent in the High Court-Land Division vide Land Case No. 184 of 2016 in respect of the encroached part into plot No. 320. He obtained a demolition order thereto through Execution No. 39 of 2018. Land Case No. 184 of 2016 was filed by the 1st respondent upon obtaining extension of time to file the case from the Minister for Constitution and Legal Affairs. The said extension of time forms the basis of the application at hand, which was argued orally by the parties.

The applicant, through his affidavit in support of the application and submission by his counsel, Mr. Gabriel Munishi, advanced two main reasons for the delay. The first reason is on illegality whereby the applicant is convinced that the Minister's decision is illegal for the fact that the extension of time was granted out of the prescribed time under the law. Referring to **section 44 of the Law of Limitation Act**, Mr. Munishi argued that the Minister is empowered to extend time where the application has not exceeded half of the prescribed time under the law. Thus, being a land matter, the time limit under the law is 12 years and, in the premises, the application to the Minister should have been made within 6 years after the initial 12 years had elapsed. He contended that the 1st respondent applied



for extension of time before the Minister after expiry of 36 years, contrary to the law.

Second, the applicant advanced "technical delay" as a reason to be granted extension of time. His counsel argued that the applicant, after the Minister's decision, engaged in various law suits in fight for his rights over the disputed plot. That he did not sleep on his rights, but engaged in wrong forums thus entitled to the extension sought.

The 1st respondent opposed the application. Having appeared in person, he was not in the position to challenge the reasons advanced by the applicant for them being technical. He only informed the court that the applicant has instituted numerous suits against him over the plot in dispute, despite him winning in almost all of them. He prayed for the application to be dismissed.

The 2nd respondent supported the application. In the submission by her counsel, Ms. Juliana Mumbuli, it was contended that the applicant has advanced good grounds for seeking the extension of time and for interest of justice on his part, he should be granted the extension sought, considering that Land Case No. 184 of 2016 was held *ex parte* against the 2nd respondent.

Ms. Narindwa Sekimanga, learned state attorney, argued for the 3rd and 4th respondents. She opposed the application on the ground that no sufficient reason has been advanced by the applicant, which is the prerequisite requirement in granting extension of time. Referring to several authorities,



being: ***Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010; ***FINCA (T) Limited & Another vs. Boniface Mwalukisa***, Civil Application No. 589/12 of 2018 (CAT at Iringa, unreported); and that of ***Vodacom Foundation vs. Commissioner General (TRA)***, Civil Application No. 107/20 of 2017, she argued that the applicant is obligated to account for each day of the delay, but failed to do so. She argued further that the delay should not be inordinate and that the applicant should show diligence and not negligence in taking action regarding the case. That, the applicant has failed to meet these requirements.

On the claim of technical delay, Ms. Sekimanga contended that the applicant stated to have known about the Minister's decision in 2019 and filed an application to be joined in the case. He however filed matters in court not related to the Minister's decision. That the applicant filed objection proceedings on Land Case No. 184 of 2016 whereby he learnt about the Minister's decision. He then filed Application No. 290 of 2016, which was dismissed, but took no action.

With regard to the claim of illegality, Ms. Sekimanga challenged the point on the ground that the Minister's decision does not amount to an illegality to be considered by the court in extension of time. Referring the case of ***Omary Ally Nyamalege & 2 Others vs. Mwanza Engineering Works***, Civil Application No. 94/08 of 2017 (CAT at Mwanza, unreported), she argued that an illegality claimed should touch on the jurisdiction of the court or be based on a court decision. She called for the application to be dismissed.



After considering the parties' arguments and the averments in the supporting affidavit and counter affidavits, my task is to evaluate the reasons for delay advanced by the applicant and ascertain whether the same are sufficient to warrant extension of time. Under the law, extension of time is within the discretion of the Court exercised judiciously in consideration of sufficient reasons advanced by the applicant on his delay. See: **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (CAT, unreported); and **Jaiuma General Supplies Limited v. Stanbic Bank Limited**, Civil Application No. 48 of 2014 (CAT, unreported).

As stated earlier herein, the applicant claims that there is an illegality in the decision by the Minister in extending time to the 1st respondent leading into filing Land Case No. 184 of 2016. In my considered view, I find that the applicant has misconceived the applicability of the principle of illegality. This principle is applicable in decisions rendered by courts of law and not other administrative bodies. It is geared at rectifying grave mistakes committed by the lower courts, by a higher court. This is inferred from a decision by the Court of Appeal in the case of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference No. 13 of 2019 in which it was held:

*"... for a decision to be attacked on ground of illegality, **one has to successfully argue that the court acted illegally** for want of jurisdiction, or for denial of right to be heard or that the matter was time barred." [Emphasis added]*

In the matter at hand, the illegality complained of, is that of the Minister granting extension of time outside the prescribed time limit. This in my view, does not fall under the illegality warranting extension of time by the court.



In essence, leave for filing an application for judicial review is granted by the court upon establishing that there is an arguable case by the applicant. The arguable case is ascertained on presence of an illegality in the decision by an administrative body. In that respect, the illegality to be corrected through judicial review is the substantive issue to be determined by the court. The framers of the applicable law knew of this fact and still put a limit of six months in challenging the decision "on illegality" by the administrative body. The same illegality cannot therefore be a ground for extension of time. This reason is thus found to be misconceived and baseless.

The applicant further claimed to have been technically delayed. His counsel, Mr. Munishi contended that the applicant in an endeavour to protect his right over the disputed property, engaged in a series of cases in various courts, unsuccessfully. This fact is not disputed as it was as well submitted by the 1st respondent. The legal position is that extension of time can be granted where the applicant has been technically delayed. See: **Elly Peter Sanya vs. Ester Nelson**, Civil Appeal No. 151 of 2018 (CAT at Mbeya, found at www.tanzlii.go.tz); and **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference no.18 of 2006 (CAT, found at www.tanzlii.go.tz). However, as argued by Ms. Sekimanga, and to which I subscribe, the claim of technical delay by the applicant has been misplaced.

Technical delay is applicable where the applicant has engaged in wrong forums in challenging the decision made, that is, of which he wishes the time to be extended for him to challenge the decision in a proper forum. In the matter at hand, the decision intended to be challenged by way of



judicial review, is the decision of the Minister rendered on 29.03.2016, extending time to the 1st respondent to file an original case. The applicant, rather, filed a number of cases in this court, the Court of Appeal, and the District Land and Housing Tribunal on the disputed plot or against decisions of this court on the disputed plot. The wrong forums he claims to have engaged were clearly not against the Minister's decision which he intends to challenge and thus he cannot shield under technical delay.

As correctly argued by Ms. Sekimanga, for extension of time to be granted, the delay must not be inordinate, and the applicant must account for each day of the delay. This was decided by the CAT in the case of ***Lyamuya Construction Company Limited vs. The Board of Trustees of Young Women's Christian Association of Tanzania*** (supra). See also: ***Dar es Salaam City Council v. S. Group Security Co. Ltd***, Civil Application No. 234 of 2015 (CAT at DSM, unreported); ***Moto Matiko Mabanga v. Ophir Energy PLC & 2 Others***, Civil Application No. 463/01 of 2017 (CAT at DSM, unreported). The applicant herein delayed for more than 6 years. This delay is inordinate and he failed to account for each day of the delay.

Having observed as hereinabove, I find the application devoid of merit. The same is therefore dismissed, with costs.

Dated at Dar es Salaam on this 05th day of May 2023.


L. M. MONGELLA

JUDGE