

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA****(IN THE SUB - REGISTRY OF MWANZA)****AT MWANZA****MISCELLANEOUS LAND APPLICATION NO. 11 OF 2023****PAUL MATHIAS MAKUNGU-----APPLICANT****VERSUS****MAGU DISTRICT COUNCIL-----RESPONDENT****RULING***16<sup>th</sup> & 26<sup>th</sup> May, 2023***Morris, J**

The Court is, at the instance of the applicant above, being moved to determine the application for extension of time. The applicant intends to file revision against the ruling of the District Land and Housing Tribunal for Mwanza (hereinafter, 'the DLHT') in execution proceedings. The subject proceedings arose from Miscellaneous Application No. 612 of 2021. An affidavit of Mussa Joseph Nyamwelo supports the application. Further, the respondent's Merchades W. Rusasa swore a counter affidavit in opposition.

Per the record, the applicant successfully sued the respondent in the DLHT. The tribunal awarded him Tshs. 69,105,640/-. The aggrieved



respondent appealed to this Court. He botched. Consequently, execution proceedings took course. The execution-race first began at the DLHT vide Misc. Application No. 131B of 2020. The respondent council was ordered to honour the decree immediately failure of which, both its Executive Director and Treasurer were to show cause why they should not be detained as civil prisoners. The decree was not settled.

The DLHT record is, however, silent on the ground which on 8/10/2020 it ordered the decree holder-applicant to appear before this court for necessary orders. Nevertheless, proceedings of this court dated 16/02/2021 indicate that the applicant prayed before the Deputy Registrar for the court's certificate to the Permanent Secretary to Treasurer. This court, instead, ordered execution proceedings to be filed before DLHT.

In view of the foregoing order, the resolute applicant; once again, filed the application for execution before the DLHT. He was moving the tribunal for the Tshs. 69,105,640/- certificate to be issued to the subject Permanent Secretary for payment in his favor. Through its ruling of 16/9/2022, the DLHT held that it lacked jurisdiction to execute the decree involving the respondent. That is, such powers were statutorily retained for the High Court. Amendment brought about by ***the Written Laws***

***(Miscellaneous Amendments) Act***, No. 1 of 2020 was cited in the said regard.

The applicant was aggrieved by the foregoing decision. Hurriedly, he appealed to this court. However, on 20/2/2023, he withdrew the appeal on the reason that the outcome of execution proceedings is not legally appealable but revisable. The yet strong-willed applicant, facing a time-bar huddle, filed the instant application to pave his way towards pursuit of the envisaged revisionary proceedings.

During hearing of this matter, the applicant was represented by Advocate Mussa Nyamwelo. The respondent enjoyed representation of Mr. John Magula, learned State Attorney. The summary of parties' rivalry submissions is straightforward. To begin with, the applicant's advocate prayed to adopt the affidavit supporting the application as part of his submissions. He then submitted that the first reason of delay is under paragraphs 12 & 13 of affidavit. That is, after the DLHT's decision, the applicant timely filed the appeal in this court. However, the same was struck out 20/02/2023.

For him, the applicant was vigilant with pursuit of his rights for about 4 months. He argued further that, the time thereof amounts to technical delay calling for not being subject to accounting for. He referred to



***Zahara Kitindi and another v Juma Swalehe & 9 others***, Civil Application 4/5 of 2017(unreported) and ***Fortunatus Masha v William Shija*** [199] TLR 154.

He also submitted that, between 21/2/2023 and 23/2/2023, the applicant's advocate prepared the appropriate documentation. Thereafter, the applicant collected copies of proceedings from this court on 27/2/2023 per paragraph 15 of the affidavit and on 2/3/2023 the present application was filed in court electronically. Mr. Nyamwelo also was of the view that the applicant has been able to account for each day of delay. Furthermore, under paragraph 16 of the affidavit, it is deposed that DLHT's decision is tainted with illegality and irregularity. He argued that the applicant was denied the right of being heard.

According to him, the law is settled that illegality constitutes a valid ground for extension of time. Reference was made to ***Andrew Athuman Ntandu & Another v Dunstan Peter Rima***, Civil Application No. 551/01 of 2019 at page 11. Consequently, he prayed for this application to be allowed.

In reply Mr. Ngalula, learned State Attorney for the respondent, also prayed to adopt the counter affidavit by Merchades Rusasa. He was of the view that, the applicant was negligent to file appeal instead of revision.



Hence, the applicant lacks a valid ground for extension of time. He referred the court to ***Omari R. Ibrahim v Ndege Commercial Service Ltd***, Civil Appl. 83/1 of 2020, (unreported) especially pages 11 & 12 and the case of ***Umoja Garage v. NBC*** [1997] TLR 109.

Regarding the fact that the applicant's advocate was perusing and preparing documents for this application, Mr. Ngalula contended that the same was not proved nor was he required to wait for proceedings in appeal no. 73/2022 because the same have no direct bearing to this application. Further, the State Attorney conceded that illegality constitutes a ground for extension of time. However, in the present matter, DLHT had the mandate to raise any point if such step was necessary. Hence, to him, aspects raised by the tribunal regarding its jurisdiction was so pertinent. Thus, the applicant was not required to be heard at such stages. He finally prayed for the application to be dismissed with costs.

In rejoinder it was submitted that, ***Omari R. Ibrahim's case*** (cited by the respondent) is distinguishable because he was previously ordered to file revision but he instead filed appeal. Further, the applicant's advocate reiterates that paragraph 14 of the affidavit is clear that he spent time to research, prepare and draft document. Also, he argued that, the copy of proceedings in appeal no. 73/2022 were necessary in order to



prove technical delay. Finally, he reiterated that parties need to be heard on matters raised *suo-motu*.

From the above contentious arguments, I will now determine the application by answering one major question: whether or not grounds advanced by the applicants (technical delay and illegality) suffice to support this application. Each ground is analyzed at a time.

It is a cardinal law that one need to advance sufficient reason for extension of time. Lest, there will be no validation for the law to set out time limits for actions and steps. Further, allowing vexatious applications will defeat the purpose of laws setting time bars. Also, long-dormant claims bear with them more cruelty than justice. On that basis, persons claiming rights should pursue them diligently and within ascertainable time. See, for instance, the case of ***M/S Sopa Management Limited vs. M/S Tanzania Revenue Authority***, Civil Appeal No 25 of 2010 (unreported). Once a person sleeps on his/her own right law stops protecting such person. In the words of my learned brother, Ngwembe J.; in ***Miraji Salimu Nyangasa vs. Ramadhan Omary Sewando (Administrator of Estate of Lake Hussain Omary Sewado)***, Civil Appeal No. 1/2021 HC (Unreported) he/she may be allowed to continue sleeping forever.

To give meaning to the laws specifying limits, the court has discretionary powers to extend time. Those powers should, however, be exercised judiciously as opposed to personal whims, sympathy, empathy or sentiment. In this regard, seek legal comfort from ***Bakari Abdallah Masudi v Republic***, CoA Criminal Application No. 123/07 of 2018; and ***Bank of Tanzania v Lucas Masiga***, Civil Appeal No. 323/02 of 2017 (both unreported).

On similar foundation, delay of even a single day needs to be accounted for. [see, ***Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others***, Civil Application No. 130/01 of 2020; ***Sebastian Ndaula v Grace Rwamafa (Legal Personal Representative of Joshua Rwamafa)***, Civil Application No. 4 of 2014; ***Tanzania Coffee Board v Rombo Millers Ltd***, Civil Application No. 13 of 2015; ***Bushiri Hassan v Ratifa Lukio Mashayo***, Civil Application No. 3 of 2007; ***Franconia Investment Ltd v TIB Development Bank Ltd***, Civil Application No. 270/01 of 2020; ***Airtel Tanzania Limited v Misterlight Electrical Installation Co. Ltd and another***, Civil Application No. 37/01 of 2020; and ***Patrick Yunde Kimu (Administrator of the Late Yunde Kimu v Rajab Mghenyi***, Civil Application No. 301/03 of 2021 (all unreported)].

I will now start with technical delay raised by the applicant. It was submitted along such line that the applicant inadvertently filed and attempted to pursue the appeal against DHLT's execution proceedings before withdrawing it on 20/2/2023. On the part of the respondent, this ground was countered on the basis that the omission constitutes negligence on part of the applicant and/or his counsel.

As correctly argued by the respondent, it is a general rule that, neither ignorance of law, negligence, inaction nor lack of diligence of party's advocate constitutes good cause for extension of time. Reference is made to cases of ***Omari R. Ibrahim v Ndege Commercial Service Ltd***, (*supra*); ***Calico Textile Industries Ltd v Pyaraliesmail Premji***, [1983] TLR 28; ***Athuman Rashid v Boko Omar*** [1997] TLR 146; ***Salumu Sururu Nabahani v Zahor Abdulla Zahar*** [1988] TLR 41; and ***Kambona Charles (Administrator of the estate of the late Charles Pangani) vs Elizabeth Charles***, Civil Application No. 529/17 of 2019 (unreported).

However, under exceptional circumstances, minor/inadvertent omissions by advocate are reluctantly condonable. For instance, in the case of ***Zuberi Mussa v Shinyanga Town Council***, Civil Application No 3 of 2007 (unreported); the Court of Appeal held that advocates are





human who also sometimes make mistakes in the course of their duties. Therefore, background and circumstance of each case need to be considered. In that regard, the advocate will, for instance, be held to lack requisite diligence especially when he makes mistakes several times. This is pursuant to ***Yusuph Same and another v Hadija Yusufu***, Civil Appeal No. 1 of 2002 (unreported).

Further, I also subscribe to the submissions by the applicant that technical delay constitutes a sufficient reason for extension of time. The fact that the applicant was, otherwise wrongly, prosecuting an appeal may be taken into account as stated in the cases of ***Zahara Kitindi; Fortunatus Masha*** (*supra*); ***Mathew T. Kitambala v Rabson Grayson and another***, Criminal Appeal No. 330 of 2018; ***Bharya Engineering & Contracting Co. Ltd v Hamoud Ahmed Nasor***, Civil Application No. 342/01 of 2017; and ***Salvand K. A. Rwegasira v China Henan International Group Co. Ltd***, Civil Reference No. 18 of 2006 (all unreported).

Therefore, guided by the above caselaw principles, I correspondingly find the time lost by him while he was in this court, to establish the technical delay in favour of the applicant. That is, such delay suffices to account for the duration from his appeal was filed (22/10/2022)



to the date when the same was withdrawn (20/2/2023). Equally so, I also hold that the three days were reasonably spent by advocate to prepare necessary documentation for this application. It is my further considered opinion that, for him to prove that he was prosecuting the appeal which was ultimately withdrawn, the applicant required to support such averment by attaching the respectively proceedings. As this court's proceedings, were supplied to him on 27/2/2023, the applicant is considered as having accounted for the days within which he awaited the subject proceedings.

The above position notwithstanding, I find it illogical the allegation that the applicant spent another time to sign documents before filing this application. I have two reasons: **one**, as the documents were already prepared by 23/2/2023; he had no justifiable reason to wait to sign them 5 days later. **Two**, such averment is found nowhere in his affidavit supporting the application. The same was raised by his advocate in the course of submissions. It has been held, now-and-again; that submissions are not evidence. See the cases of ***the Registered Trustees of Archdiocese of Dar es Salaam v The Chairman Bunju Village Court and eleven others***, Civil Appeal No.147 of 2006; and ***Ison BPO***

***Tanzania Limited v Mohamed Aslant***, Civil Application No. 367/18 of 2021 (both unreported).

Therefore, in fine, the first ground for extension of time is not merited. That is, the instant application was filed on 2/3/2023. The applicant has, thus, failed to account for the two days 28/2/2023 and 1/3/2023. As stated hereinabove, delay of even a single day needs to be accounted for.

The second reason is married to illegality. The applicant submitted that the issue for changes of law brought about by the amendment of the statute was solely raised and decided by the DLHT. Parties were not afforded the right of audience thereof. On the part of the respondent, it was submitted that the omission to hear parties on raised issue was not fatal and the DLHT was justified to act as it did. Am hardly invited by the respondent's gesture in this regard.

It is a settled principle of law that, where illegality is raised as a ground for seeking an extension of time; such ground amounts to sufficient cause. Several cases are readily available hereof. See, for instance, ***Principal Secretary, Ministry of Defence and National Service v Devram Valambia*** [1991] T.L.R. 387; ***Ngao Godwin Losero v Julius Mwarabu***, Civil Application No. 10 of 2015; ***VIP Engineering***



**and Marketing Limited and Three Others v Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006; **Sabena Technics Dar Limited v Michael J. Luwunzu**, Civil Application No. 451/18 of 2021; **Iron and Steel Limited v Martin Kumaliya and 117 others**, Civil Application No. 292/18 of 2020; **Lyamuya Construction Company Limited vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010; **Makefason Mandalei & others vs. the registered trustee of the Archdiocese of Dar es salaam**, Civil Application No, 397/17 of 2019; and **Wambura N.J. Waryuba v the Principal Secretary Ministry of Finance and another**, Civil Application No. 225/01 of 2019 (all unreported).

In law, a decision reached without affording parties the right to be heard, brings to the fore the issue of illegality. [See, **Alisum Properties Limited v Salum Selenda Msangi (Administrator of the estate of the late Selenda Ramadhani Msangi)**, Civil Appeal No. 39 of 2018; **the Registered Trustees of Arusha Muslim Union v the Registered Trustees of National Muslim of Tanzania @ BAKWATA**, Civil Appeal No. 300 of 2017 and **Kumbwandumi Ndemfoo Ndossi v Mtei Bus Services Limited**, Civil Appeal No. 257 of 2018 (all unreported)].

Therefore, the alleged omission by the Chairman of the DLHT squarely falls in the same category. The omission, if proved, goes to the root of the decision even if the decision would have not changed upon hearing the parties.

I thus hold that, for the issue of illegality suffices to influence my exercise of discretion in extending time; this Court is accordingly inclined to allow this application. The applicant is given fourteen (14) days to file the intended revision, if he so still wishes. Time starts to run from today. Each party shall bear own costs. It is so ordered and the right of appeal is fully explained to parties.



**C.K.K. Morris**

**Judge**

**May 26<sup>th</sup>, 2023**

Ruling is delivered this **26<sup>th</sup>** day of **May 2023** in the presence of Mr. Paul Mathias Makungu, the applicant, and in the absence of the respondent.



**C.K.K. Morris**

**Judge**

**May 26<sup>th</sup>, 2023**

