

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 488 OF 2021

(Originating from the decision of this court in PC. Civil Application No. 108 of 2018)

RAMADHANI MYONGA.....1st APPLICANT

SAUDA HUSSEIN2nd APPLICANT

VERSUS

ISAMIL JUMA SAID.....RESPONDENT

RULING

S.M.MAGHIMBI, J.

The first and second Applicants are moving the court for an order for extension of time within which to file an application for certification of point of law so as to enable them to appeal to the Court of Appeal of Tanzania against the judgment and decree of this court (Hon. J. A. De – Mello, J), in PC. Civil Appeal No. 108 of 2018 delivered on the 17th March 2020. They are also seeking for orders that costs of this application be provided for. The application was lodged under the provisions of Section 11(1) of the Appellate Jurisdiction Act, Cap 141. R.E. 2002 and Section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019. It was preferred by way of Chamber Summons supported by an affidavit of Ramadhani Myonga and Sauda

Hussein who are co – administrator of the Estate of the late Hawa Yusuf Darabu.

On his part, the Respondent who appeared in person and unrepresented, opposed the application through a counter affidavit deponed by himself on the 09th March, 2022. The application was disposed by way of written submissions. The applicants' submissions were drawn and filed by Mr. J, Msengezi learned Counsel while the respondent's submissions were drawn and filed by the respondent in person. I have gone through the submissions of both parties and with much appreciation, I will not reproduce them, instead, I will take them on board in constructing the ruling.

The applicant's main reason to support this application is illegalities contained in the ruling of this Court. Mr. Msengezi alleged that the said ruling denied the applicants' right to be heard on the new issues raised. That the move of the appointment of the Respondent as a co- administrator was neither requested by himself nor beneficiaries of the deceased's estate but rather by Court Suo moto without according them the right to be heard. He went on submitting that the intended appeal is likely to challenge those illegalities which has been shown in their application. He argued that those illegalities are sufficient to establish good cause for the Court to grant them the relief(s) sought. To buttress his argument cited the case of; **Yusufu Same & Another Vs Hadija Yusuf, Civil Application No. 1 of 2002** (unreported).

Mr. Msengezi went on submitting that they had previously applied for leave to appeal to the Court of Appeal vide Misc. Application No. 247 of 2020

whereby on 29th July 2021 the High Court delivered its ruling to the effect that since the matter originated from the Primary Court, then the Applicants have to apply for certification on point of law to appeal to the Court of Appeal. That soon after receiving the said ruling, they applied to be availed with a copy so as to apply for certification on point of law to the Court of Appeal but they were time barred, henceforth the instant application. The applicants hence argued that the delay to file this application is not inordinate or occasioned by sheer negligence. Further that since the estate is no longer earning any income, they have to look for source of funding so as to pay advocate fees.

In the reply, the Respondent submitted that the judgment in PC. Civil Appeal No. 108 of 2018, was delivered on 17th March 2020, before Hon. J.A. De – Mello, J in his favour, and the Applicants herein negligently failed to file for certification on point of law in time. That the applicants were represented by the lawyer who is conversant with the law. That the Applicants herein failed to account for each day of delay because the judgment and decree vide PC. Civil Appeal No. 108 of 2018 was delivered on 17th March 2020, and copy of the said Judgment and decree was ready for collection on 18th March 2020 but the Applicants stayed idle and applied for the same on 19th May 2020. He supported his submissions by citing the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Yond Women Christian Association of Tanzania, Civil Appeal No. 2 of 2010** (unreported) where the court held that each day of delay has to be accounted for.

In a short rejoinder, Mr. Msengezi reiterated his submission that the applicants have shown the illegalities which amount to sufficient cause for the Court to grant the relief(s) sought by the Applicants. To support his stance, he cited the case of **Metro Petroleum Tanzania Ltd Vs United Bank of Africa, Civil Appeal No. 147 of 2019, CAT**, where the court held that where the illegality is raised as a ground for seeking extension of time, such ground amounts to sufficient cause.

Having gone through the rival submission of the parties, the issue is whether the applicant has established sufficient reasons to warrant extension of time. It is trite law that the extension of time will be granted at the discretion of the Court, but that discretion is supposed to be exercised judiciously in accordance with the rules of reasoning and justice. (See the case of **Lyamuya Construction Company** (Supra)) where at page 7, the Court inter alia held that the applicant must account for all the period of delay, the delay should not be inordinate while the Applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of action he intends to take. It was also emphasized that extension may be granted if the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged, time may be extended.

At this point, the main question remains whether the applicants have adduced sufficient reasons for the delay to lodge this application. It is evident that after being the judgment of this court was delivered the applicants lodged an application for leave to appeal to the Court of Appeal vide Misc. Civil Application No. 247 of 2020. The application was dismissed

on the ground that the matter originated from Primary Court hence the proper application was to apply for certification on point of law and not application for leave to appeal to the Court of Appeal. Therefore, at this point, the delay was technical because it is evident that the applicants are up in arms in pursuing their right to appeal.

I have further considered the reason of illegality where the applicants have alleged that the court came up with an issue *suo moto* and decided it without affording them a right to be heard. This is a point of illegality that is worth extending time. For the two reasons above, this application is hereby allowed. Time is extended for the Applicants to lodge an application for certification on point of law to appeal to the Court of Appeal against the Judgment and Decree in Pc. Civil Appeal No. 108 of 2018 dated 17th March, 2020. The intended application shall be lodged in court within thirty (30) days from the date of this ruling. This being a probate matter, I find it just that at this point, costs should not be awarded.

Dated at Dar es Salaam this 03rd Day of May, 2023.



A handwritten signature in black ink, appearing to be "S.M. Maghimbi", is written over a horizontal dotted line.

S.M. MAGHIMBI

JUDGE