

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 25 OF 2022

(Originating from Land Case No. 28/2016 before Hon. Mutungi, J)

ABDALLAH SAID (*Administrator of the estate of the late*
Mwanahawa Abdallah) **APPLICANT**

VERSUS

NOEL MAYENGA.....**RESPONDENT**

RULING

S. M. MAGHIMBI, J:

By way of chamber summons supported by an affidavit, the applicant has lodged this application under the provisions of Section 11(1) of the Appellate Jurisdiction Act [Cap 141, R. E 2019]. The applicant is moving this court to grant orders for extension of time to lodge notice on appeal to the Court of Appeal against the judgment and decree of this court in Land Case No. 28/2016, dated 14th December 2018.

Before this court the applicant was represented by Mr. Ndanu Emmanuel while the respondent was represented by Mr. Cleophas Manyangu, both learned Advocates. The application was disposed of by way of written submission.

As per the records of this application, the applicant was the plaintiff in Land Case No. 28 of 2016 which was decided in favour of the

respondent herein. Aggrieved by the decision, the applicant intended to file an appeal to the Court of appeal and had filed a notice of appeal in time. After the applicant was supplied with all the documents necessary for preparation of the record of appeal, the same was prepared and accordingly filed at the Court of appeal. When the matter was called for hearing on 8th June, 2022, the Court discovered an anomaly in the records of appeal as the letter from the High Court registry informing the applicant that Judgement, Decree, Proceedings and certified copies of exhibit were ready for collection was missing. This anomaly then rendered the record of appeal incomplete. Consequently, the applicant prayed for the withdrawal of the appeal so as to rectify the anomaly. That rendered the applicant to be out of time to file the notice of appeal hence this application.

In his submissions to support the application, Mr. Ndanu Counsel for the applicant, cited the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where the principles to grant extension of time were outlined. In his take, accounting for the days of delay from when the land matter was determined to the date that this application was filed online are stipulated in the affidavit. That the reason for the delay was caused

by the Court where records had delayed to be served upon them. Although the certificate of delay was granted to them by the Deputy Registrar, he stated, the delay was also caused by the anomaly that was discovered at the Court of appeal on the missing letter and that the said letter was never availed to them by the Court. Moreover, he added, that after the order for withdrawal was granted by the Court of Appeal, frequent follow-ups were made to secure the said order. That it wasn't until 25th August 2022 when the said order was supplied to them and that from 25th August 2022 to 30th August 2022, the time was used in preparing the application and filing the same online. Moreover, the applicant avers that the judgement and decree to be appealed against is tainted by illegalities and irregularities as stated under paragraph 10 of the affidavit. He concluded that the delay was not an inordinate one, rather a technical delay.

In reply, Mr. Cleophas Manyangu submitted that they have gone through the affidavit and the written submissions filed by the Applicant on 19th day of April 2023, and they hasten to submit that the said application is misconceived and devoid of merits and the same should be dismissed with costs. He vehemently objected the grant of the application by praying to adopt the contents of his counter affidavit to form part of his submissions.

Mr. Manyangu went on submitting that extension of time is within the discretion of the Court and that before the court exercises its judicial discretion to grant or not to grant order of extension as sought in the Chamber summons, the applicant or a person seeking extension of time should among other conditions establish good or sufficient reasons or causes. He supported his submissions by citing the case of **Regional Manager, Tanroads Kagera vs Ruaha Concrete Company Limited, Civil Application No. 96 of 2007 (Unreported)**, where the Court of Appeal of Tanzania discussed the phrase '**sufficient cause**' where, it was stated that:

*"What constitutes **sufficient reason**" cannot be laid down by any hard and fast rule. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time limited by the Rules".*

He further cited the case of **Lyamuya Construction Company Limited (Supra)** whereby the court established factors which constitute good or sufficient cause particular in an application of such a nature. He then submitted that analysing the reasons stated for the delay by the applicant, the affidavit of the applicant contains eleven (11) paragraphs and it is only paragraphs 9 and 10 which give the reasons for extension of time. That the two paras gather the reasons for the delay as alleged by

the applicant which are in two folds; **first**, it was a technical delay and **Secondly**, the applicant has alleged existence of illegalities in the impugned Judgment as a sufficient cause for extension of time. His argument was that in the first limb on delay, it is undisputed fact that the instant application for extension of time to lodge a notice of appeal was filed in this Court on 1st day of September, 2022. On the other hand, the Judgment of the Court was pronounced on 14th day of December 2018 hence the Applicant has to account each and every day from 9th day of January 2019 to 1st day of September 2022. Short of that, he argued, the application stands to be dismissed with costs. That the delay of nearly 4 years from 9th day of January 2019 to 1st day of September 2022 is really an inordinate delay and need some explanations as to why the applicant did not take appropriate legal action against the impugned judgment entered on 14th day of December 2022, he cited the case of **Bashiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** requirement was established.

He went on submitting that the technical delay alleged by the applicant in his affidavit on failure to attach in the records of appeal the letter from the Registrar for collection of the Judgment, decree and exhibits raises question like how did the applicant manage to get hold of the Judgment, Decree and exhibits which he used to lodge his purported

appeal without having the letter for collection from the Registrar? Further that if the applicant was able to obtain and collect the certificate of Delay from the same Deputy Registrar of the High Court what prevented him obtaining the vital letter from the Registrar.

Mr. Manyangu submitted further that the period from 25th day of August 2022 to 30th August 2022 is also not accounted for. He argued that if the applicant was aware since June 2022 of intention to file the appeal again, what prevented him to prepare the application for extension of time before until when he received the order on 25th day of August 2022.

With regards to illegality, he submitted that the Applicant alleged that the decision contains illegalities and mentioned the purported illegalities under paragraph 10 (i) - (iv) of his supporting affidavit. He argued that the purported illegalities under the said paragraph are misplaced as they do not meet the threshold provided in the landmarks of **Principal Secretary Ministry of Defence and National Service v. Devran Valambia [1991] T.L.R 387, Lyamuya Construction Company Limited v. The Board of the Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** and **Ngao Godwin Losero v. Julius Mwarabu, Civil Application No. 10 of 2015**. And the recent case of **Charles Richard Kombe Versus Kinondoni Municipal Council, Civil**

Reference No. 13 of 2019 Unreported. That in the said decisions, it was emphasized that illegality should not involve long drawn arguments for it to qualify as a ground for extension of time. He then pointed out that the purported issues covered under paragraph 10 (i) to (iv) of the applicant' supporting affidavit are not among such issues. That nevertheless, they involve a long-drawn argument to fit to be ground for extension. He concluded that from the above, the applicant has not accounted for the days of delay, neither do the illegalities pleaded hold water. He prayed for the dismissal of the application with costs.

I have dispassionately gone through the submissions of the parties. It is the applicant's submission that the delay occurred was a technical delay and the same is justifiable. Apart from that, the applicant also submitted that the decision intended to be appealed against is tainted by illegalities and hence from these two aspects the Court is sought to grant an extension of time. The Respondent on the other hand opposes the application by insisting that the delay claimed to be technical was not technical and that the applicant has not accounted for the delay. The respondent also challenges the delay unaccounted for between 25th day of August 2022 to 30th August 2022, while he had the knowledge of his intention to file the appeal concluding that the applicant has failed to account for the delay. In respect of the illegalities, I have noted that the

respondent's Counsel challenged the illegalities outlined and argues that they do not qualify to be illegalities in the eyes of law.

It is trite law that an order for extension of time is purely on the discretion of the Court, and extension is granted on satisfaction that the reasons for the delay are sufficient to warrant the court's exercise of that discretion. The issue here is whether the reasons advanced by the applicant justify the court's exercise of its discretion.

In the case of **Rose Irene Mbwete vs Phoebe Martin Kyomo (Civil Application No. 70 of 2019) [2023] TZCA 111 (10 March 2023)** the Court stated: -

*"Therefore, as a matter of general principle, it is **in the discretion of the Court to grant or not to grant extension of time**. However, that discretion must be **exercised judiciously**, according to the rules of reason and justice, and not permit private opinion or arbitrarily. The term good cause has not been defined, but it can be interpreted depending on the circumstances of each case".*

Having that in mind, the records are clear and undisputed from the respondent that the applicant has been in the corridors of the Court and at first instance he had filed his appeal to the Court of appeal timely. At the Court of appeal when the matter was called for hearing, it was discovered that the records before the Court had an anomaly whereas a letter from the High Court which was to form part of the records that was

missing. When Mr. Ndanu who appeared for the appellant at the Court of Appeal obtained knowledge of the said anomaly, he prayed for the appeal to be withdrawn.

The said appeal was withdrawn on the 08th June, 2022 and an application for extension to file notice was filed on 1st day of September. The circumstance herein reveals there is a lapse of more than 84 days. The Applicant's Counsel states to have been making follow up of the Court of appeal Order frequently. Perusing the annexures and the records of the Court, I find no proof of the Counsel's efforts on the follow ups claimed. There is no letter addressing the registry of the Court of Appeal requesting for the said order, neither is there proof of when the said Order was procured by the applicant's Counsel. The applicant had the duty to account before the Court each of the days that are revealed to be the days of delay. At this juncture I find that the applicant failed to account for the days of delay.

The applicant has pleaded illegality as another ground for extension of time. In his affidavit, the applicant has outlined a number of illegalities he claims to be tainted in the judgement and decree intended to be appealed against. It is trite law in our jurisdiction that where illegality is pleaded, it warrant extension of time. However, illegality in isolation cannot be the sole ground of extension if the other reasons for the delay

to even identify or establish the illegalities are not accounted for. The illegality pleaded is not an obvious illegality, rather it is a wrong drawn process of arguments which can result into multiple conclusions (See the case of **African Marble Company Limited (AMC) vs Tanzania Saruji Corporation (TSC)**, Civil Application No. 8 of 2005 [2005] TZCA 87 and **Chandrakant Joshubhai Patel v. Republic**, [2004] TLR 218 where the court held that illegality has to be apparent on the face of record should be an error that can be seen by one who writes and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As for this application, the alleged illegality does not qualify those elaborations.

In conclusion therefore, I find the application to be devoid of merits and it's hereby dismissed with costs.

It is so ordered

Right of appeal explained.

Dated at Dar es Salaam this 18th day of July 2023.




S. M. MAGHIMBI
JUDGE