

**THE UNITED REPUBLIC OF TANZANIA  
IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MTWARA  
AT MTWARA**

**MISC. LAND APPLICATION NO. 5 OF 2023**

(Arising from Misc. Land Application No. 13 of 2019 and Originating from Land  
Appeal No. 30 of 2017)

**ISMAIL JUMA SILIM ----- APPLICANT**

**VERSUS**

**MWINYI MUHUNZI ABDALLAH ----- RESPONDENT**

**RULING**

*Date of last Order: 20.09.2023*

*Date of Ruling: 06.10.2023*

**Ebrahim, J.**

The present application has a rather chequered history. To appreciate the nature of the present application, I find it apt to narrate it albeit briefly as I could assemble from the records. It goes like this: being aggrieved by the decision of this Court (Hon. Dyansobera, J) dated 7<sup>th</sup> May, 2019 in Land Appeal No. 30 of 2017,

on 20<sup>th</sup> May, 2019 through the services of Willson Edward Ogunde, Advocate, lodged a Notice of Appeal. Subsequently, the Applicant prepared an application for leave to appeal to the Court of Appeal which was filed before this Court on 3<sup>rd</sup> June, 2019 and registered as Misc. Civil Application No. 13 of 2019. On 1<sup>st</sup> September, 2020 the application was dismissed before this court by Hon. Dyansobera, J. Thereafter the Applicant lodged an application for leave to appeal to the Court of Appeal. On the 27<sup>th</sup> March, 2023 when the appeal was called for hearing, the learned Counsel for the Applicant Mr. Lekey in consultation with the court prayed for the matter to be struck-out after conceding that the application was incompetent. Following such prayer, the Court (Rumanyika, J.A.) struck out the application.

Undeterred and still eager to prosecute the matter and being out of time after the passage of three years the Applicant has now approached this Court seeking for extension of time within which to lodge an application for review before this Court against the decision of this Court in Misc. Civil Application No. 13 of 2019.

The application has been preferred by a chamber summons under **Section 14 (1) of the Law of Limitation Act [CAP. 89 R.E. 2019]** and **Order XLII Rule 1 (1) (a) & (b) of the Civil Procedure Code [CAP. 33 R.E. 2019]**. It is supported by an affidavit duly affirmed by Ismail Juma Silim, the Applicant. The Respondent objected the application through a counter affidavit affirmed by Mwinyi Muhunzi Abdallah, the Respondent.

The application was argued by way of written submissions. The Applicant's submission was prepared and filed by the learned Counsel Ms. Radhia Luhuna whilst the Respondent appeared in person, unrepresented. Submissions were duly filed as scheduled by the Court.

I wish to point out that I took a liberty to reproduce the above background in detail because the Applicant complains the illegality of the impugned decision his application. To support his application, the Applicant argued that there was no negligent on his part in the prosecution of the appeal. To support his position, the Applicant cited the case of **Attorney General vs. Emmanuel Marangakisi (As Attorney of Anastansious Anagnostou and 3 Others,**

Civil Application No. 138 of 2019, CAT-2019 and **Executive Director of Kilwa District Council Vs. Bogeta Engineering Limited** (Misc. Civil Application No. 2 of 2023) [2023] TZHC 19132 (4 July 2023) where it was held that: -

*"Having said that I find no reason to embark on the issue of accounting for the each of delay as I agree that the raised issue of illegality suffice on its own to warrant this court to exercise its judicial discretion to extend time. Accordingly, I allow the application and the Applicant is availed 30 days from the date of this ruling to lodge notice of appeal to the Court of Appeal of Tanzania against the decision of this Court"*

In addition to that the Applicant alleged that the ruling of the Court is clear that the issue of time barred was raised suo motto by this court without inviting parties to address the said issue. The Applicant cited the case of **Deo Shirimja vs. Two Others**, Civil Application No. 34 of 2008 (Unreported) where it was observed that: -

*"None of the parties was heard at all before the order was made. As it turned out, the order made in breach of the rules of natural justice, immediately adversely affected the plaintiffs in the suit and subsequently the current applicants who were the agents/servants of the former. It is*

*established law that any judicial order made in violation of any of the two cardinal rules of natural justice is void from the beginning and must always be quashed, even if it is made in good faith."*

He prayed for the application to be granted.

In response, the Respondent argued that the affidavit of the Applicant does not explain what transpired between from 01.09.2020 to 17.04.2023 when he filed this application. He contended that the Applicant was supposed to account on each day of his delay and to give sufficient reasons as it is a mandatory requirement provided under **Rule 10 of Court of Appeal Rules of 2019**. To cement his argument he cited the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010, CAT-Arusha. The Respondent further argued that the Applicant has failed to show the illegality in the impugned decision. He therefore, prayed for the application to be dismissed with costs.

In rejoinder, Counsel for the Applicant reiterated what he submitted in chief and referred to the cited case of **Tanzania Petroleum**

**Development Corporation vs. Mussa Yusuf Namwao and 23 Others**

(Supra) that there is no reason to embark on the issue of accounting for each delay due to the raised issue of illegality which on its own suffice to warrant this court to exercise its judicial discretion to extend time. He added further that the Respondent agrees to the fact that the matter was raised by court suo motto without affording parties the right to be heard which is illegal amounting to the ground for extension of time.

He observed that the issue of illegality in their case is not discovered by long-drawn argument or process rather it is sufficient enough to warrant extension of time. He reiterated his prayer.

I have given due consideration of the submissions for and against the application. In line with the submissions, are the affidavit and counter affidavit filed in support and against the application. The question for determination is whether the applicant has demonstrated sufficient reasons for his delay to file his intended application. Again if the Applicant accounted for the days he delayed to pursue his intended cause.

Extension of time is a discretionary power of the court to be exercised judiciously. The Court of Appeal has in the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011), which established guidelines to be observed by Court in granting extension of time. The Court held as follows:

*"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: -*

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) 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."*

Going through the affidavit of the Applicant, it can clearly be seen that the Applicant soon after the finalization of the impugned decision on 7<sup>th</sup> May, 2019 at this Court, lodged a Notice to appeal on 20<sup>th</sup> May, 2019. On 3<sup>rd</sup> June, 2019 he preferred an application before this court which was dismissed for being time barred. He filed an application for leave to appeal to the Court of Appeal before the Court of Appeal on 27<sup>th</sup> March, 2023 which was struck out for being incompetent. According to paragraph 3 to 13 of the affidavit, the Applicant explained all the journey he went through to the instant application where he had to file this application for extension of time.

The Respondent insisted that the Applicant had to adduce sufficient reasons which caused the delay and insisted also that the Applicant did not account each day of his delay from the day when the impugned decision was delivered. He cited the case of **Rivertrees Limited vs. Samwel Moshi** Misc. Labour Application No. 71 of 2021 which cited the case of **Sebastian Ndaula vs. Grace Rwamafa**



(Legal Personal Representative of Joshwa Rwamafa) Civil Application No. 4 of 2014 (Unreported) at page 3.

Further to that he contended that the point of illegality raised by the Applicant falls short of the criteria of illegality as it was observed in the case of **Lyamuya Construction Limited** (Supra) page 9 where it was held that:-

*"The court... emphasized that such point of law must be that "of sufficient importance" and I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long-drawn argument or process"*

If at all one could say that the Applicant has been making a lot of mistakes in his previous applications making him enjoin a long route and multiple applications. The same notwithstanding, I cannot close my eyes and ignore the initial efforts shown by the Applicant as he filed the first application well within prescribed time only to be dismissed and then followed by a series of applications. Verily, I can say that the Applicant exhibited diligence; and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take (Lyamuya's case (Supra)).

More so, the Applicant clearly explained as to why he delayed from filing the instant application from the date of the last order of this court of 1<sup>st</sup> September, 2020. However, I must pose here and admit that I would not dwell much on the issue of illegality as I find the technical issues causing the delay is well explained and in considering the determination by the Applicant to lodge his appeal.

All said and done, I find that the Applicant has established sufficient reason for this court to exercise its discretionary powers to grant the application. I allow the application and the Applicant is granted thirty (30) days from the date of this ruling to lodge his application for review.

Ordered accordingly.



A handwritten signature in blue ink, appearing to read "R.A Ebrahim", is written over the printed name.

**R.A Ebrahim**

**JUDGE**

**Mtwara**

**06.10.2023.**