

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 588 OF 2022

(Arising from Land Case No. 188 of 2016)

THE REGISTERED TRUSTEES OF

WINNERS CHAPEL INTERNATIONAL.....APPLICANT

VERSUS

MARIAM MATHIAS.....1ST RESPONDENT

MAGRETH ANTHON.....2ND RESPONDENT

SILILI NTWEVE.....3RD RESPONDENT

GRACE ELIAS.....4TH RESPONDENT

Date of last order: 06/12/2022

Date of ruling: 14/12/2022

RULING

A. MSAFIRI, J.

On 22nd September 2022, the above named applicant lodged the present application, by chamber summons under Section 11(1) of the Appellate Jurisdiction Act, [CAP 141 R.E 2019], (the AJA) seeking for the following reliefs namely;

- i. This Honourable Court be pleased to extend time within which the applicant can lodge a notice of appeal with a*

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view to appeal to the Court of Appeal of Tanzania against the decision of the High Court (Land Division) in Land Case No. 188 of 2016 which was delivered on the 17th July 2020.

- ii. This Hon. Court be pleased to extend time within which the applicant can lodge a letter requesting for copies of judgment, decree, proceedings and exhibits with a view to appeal to the Court of Appeal of Tanzania against the decision of the High Court (Land Division) in Land Case No. 188 of 2016 which was delivered on the 17th July 2020.*
- iii. This Honourable Court be pleased to extend time within which the applicant can lodge an application for leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court (Land Division) in Land Case No. 188 of 2016 which was delivered on the 17th July 2020.*
- iv. Costs of this application be provided for. *

v. *Any other/further relief(s) that this Court may deem just and equitable to grant.*

The application has been taken at the instance of Grace Attorneys at Law and it is being supported by an affidavit sworn by Mr. Elder Pellegreen Jacob Mrope, Principal Officer of the applicant.

I ordered the application to be disposed of by way of written submissions. The applicant had the services of Mr. Makubi Kunju learned advocate while the respondents had the services of Mr. Steven Byabato learned advocate. Parties duly complied with schedule in filing their written submissions to support their respective stances hence this ruling.

Much as I could discern from the record of this application, on 20th June 2016 the above named applicant filed a suit in this Court which was registered as Land Case No. 188 of 2016. The suit was against five defendants, the respondents herein inclusive although one Samwel Kassim is not a party to the present application. The applicant was claiming against the respondents and one Samwel Kassim for trespass on its land situated at Goba, Kinondoni District.

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It is on record that the said case was dismissed on 17th July 2020 after the speed track of the case had expired and extension thereof was rejected on the ground that the applicant had failed several times to comply with the court's orders.

Following the dismissal of Land Case No. 188 of 2016, the applicant filed a fresh case before this Court which was registered as Land Case No. 188 of 2020 but the same was struck out with costs for being res judicata.

In this application the applicant intends to challenge the decision of this Court in Land Case No. 188 of 2016. In its submission in support of the application, the applicant has urged the court to grant the reliefs sought as there are sufficient reasons for the court to do so. Citing the decision of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2020 (unreported), the applicant contended that there are several factors that have to be taken into account before the Court can exercise its discretion for extension of time;

- i. The applicant must account for all period of delay.*
- ii. The delay should not be inordinate.* 

- iii. *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. *If the court feels that there are sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

It was the submission by the applicant that there is illegality apparent on the face of record hence such allegation is sufficient for the Court to grant an extension of time irrespective of whether the applicant has accounted for each day of the delay. To fortify its stance the applicant has cited the decision of **Ibrahim Twahil Kusundwa & another v Epimaki Hamisi Babu Bally v The Judicial Officers Ethics Committee & others** Civil Application No. 437/17 of 2022 (unreported).

The illegalities complained of by the applicant are that the court proceeded to make further orders on amendment of pleadings and more parties without departing from the already set speed track. The applicant further alleges that at the time the court made an order for amendment the speed track had already expired but the court reasoned that the speed track

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expired due to noncompliance of the applicant order. Also new parties were added to the matter but the court proceeded with the already set scheduling order which was said to expire on the cause of the applicant while new parties were not involved in the first pretrial conference and mediation process.

Therefore, basing on the above complained illegalities, the applicant contended that the prayers sought on the application should be granted.

The respondents opposed the application by lodging in court a joint counter affidavit. In their submission opposing the application, the respondents contended that the applicant has not advanced sufficient cause for the court to exercise its discretion for extension of time. They submitted that in the instant application, the applicant did not account for delay ever since the case was dismissed.

The respondents submitted further that the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) is distinguishable to the circumstance of the present matter because in the present application the applicant was not diligent from the date of the order sought to be

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appealed against. Hence, they prayed for the application to be dismissed with costs.

On rejoinder the applicant essentially reiterated its submission in chief contending that the application has disclosed sufficient reason for the court to grant an extension of time. There is technical delay as well as illegality hence there is no need of accounting for each day of the delay.

Having gone through the parties' submissions rival and in support of the application the sole issue calling for the court's determination is whether the application has merits.

As stated earlier there are three substantive prayers sought by the applicant in this application namely; *extension of time to file notice of appeal, letter requesting for copies of judgment, decree proceedings and exhibits and lastly, leave of appeal to the Court of Appeal*. Each of the sought reliefs will be determined independently.

Without wasting much energy, I would like to first address on the 3rd relief in which the applicant is seeking for extension of time to file leave of appeal to the Court of Appeal against the decision of this Court in Land Case No. 188 of 2016. The said case was dismissed on 17th July 2020. *Alle*.

It follows therefore that the ruling sought to be challenged arose from the matter in which this Court was exercising its original jurisdiction. As the law stands now after the coming into force of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018- Act No.8 of 2018, which amended section 47 of the Land Disputes Courts Act [CAP 216 R.E 2019] (the Act), in land matters originating from the High Court in the exercise of its original jurisdiction, leave is no longer necessary for an aggrieved party to appeal to the Court of Appeal.

To appreciate the position, as it stood before the said amendments, section 47(1) of the Act read:

*47(1) Any person who is aggrieved by the decision of the High Court on **the exercise of its original, revisional or appellate jurisdiction, may with the leave of the High Court** appeal to the Court of Appeal...*[Emphasis added]

After the amendments that section reads:

47(1) A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may *Appeal*

appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act.

Hence the decision sought to be challenged was passed after the amendment of the Act, therefore determination of the 3rd relief serves no purpose in the instant application. This is for the reason that the applicant had no obligation to seek for leave while the matter sought to be appeal against originate from the decision of the High Court exercising its original jurisdiction.

Then I will proceed with determination of the 2nd relief in which the applicant is seeking for extension of time to file a letter requesting for copies of judgment, decree and proceedings. The present application has been preferred under Section 11(1) of the AJA. The said provision empowers this Court to grant an extension of time to file notice of appeal, leave of appeal and application of certificate on point of law. The said provision is silent as to whether this Court can grant an extension of time regarding filing or service of a letter requesting for copies of judgment, decree or proceedings in an appealing process to the Court of Appeal. *Alle*

I am much aware that in terms of Rule 90 of the Court of Appeal Rules 2019 (the Rules) the letter requesting for copies of judgment, decree and proceedings is required to be filed in this Court within 30 days of the impugned decision in order for the appellant to benefit with an exclusion of time within which he was making follow ups of the said documents. And that letter is required in terms of Rule 90 (3) of the Rules to be served to the respondent. Hence be it that way, filing and service of a letter requesting for copies of judgment, decree and proceedings is not governed by the AJA rather the Rules. It is unfortunate that this Court cannot grant an extension of time in filing and service of the letter requesting for the copies of judgment, decree or proceedings in an appealing process to the Court of Appeal. Rather that is an exclusive domain of the Court of Appeal.

I am much aware that this Court and the Court of Appeal enjoy concurrent jurisdiction although remedy has to be exhausted in this Court first before resorting to the Court of Appeal. Among the areas which this Court enjoys jurisdiction concurrently with the Court of Appeal are on applications for leave, certificate on point of law as well as notice of appeal.

Filing or service of a letter requesting for copies of judgment, decree or proceedings in appealing process to the Court of Appeal is not among said *Acts*.

matters. Therefore, the 2nd relief in this application is misplaced. It should be made before the Court of Appeal itself in terms of Rule 10 of the Rules.

Now let me proceed with determination of 1st relief in which the applicant is seeking for extension of time to file notice of appeal. Rightly as submitted by the applicant and in view of the decision of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra), before the Court can exercise its discretion for extension of time, good cause must be shown.

However, what constitutes good cause has not been codified although, in various instances, a number of factors are to be considered to constitute good and sufficient cause. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant. (See for instance the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001, **Tauka Theodory Ferdinand v. Eva Zakayo Mwita (As Administratrix of the Estate of the Late Aibanus Mwita)** and **Wambura N. J. Waryuba v. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 (all unreported). *Alls*

The decision sought to be challenged by the applicant was made on 17th July 2020 and this application was lodged in Court on 22nd September 2022. Hence over **two years** have lapsed. Therefore, the applicant was mandatorily required to account for each day of the delay as stated above.

In the instant application, the applicant did not account for each day of delay rather it has alleged existence of illegality on the face of record of the decision complained of.

I fully subscribe to the position of the law that where there is an allegation of illegality the same is sufficient ground for extension of time regardless of whether the applicant has accounted on each day of delay.

But in order to constitute illegality, it must 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. This position of law has been restated in a number of cases including; **The Principal Secretary, Ministry of Defence And National Service v Devram P. Valambhia** [1992] T.L.R387, **Lyamuya Construction v Board of Young Women Christians Association**, (supra) *Alles*.

The issue therefore is whether there is a valid point of illegality raised by the applicant to justify the application. I have keenly gone through the submissions as well as the affidavit in support of the application. In the affidavit at paragraph 26, the applicant has alleged the following illegalities; *the court proceeded to make further orders on amendment of pleadings and more parties without departing from the already set speed track. At the time the court made an order for amendment the speed track had already expired but the court reasoned that the speed track expired due to noncompliance of the applicant order. Also new parties were added to the matter but the court proceeded with the already set scheduling order which was said to expire on the cause of the applicant while new parties were not involved in the first pretrial conference and mediation process.*

Looking at the above complained illegalities, they are not apparent on the face of the decision sought to be appealed against rather their determination will attract long drawn process and arguments involving going to the proceedings.

The major factor leading to the dismissal of Land Case No. 188 of 2016 was attributed by the applicant's non-compliance with the Court's orders hence the Court rejected further extension of the speed track hence gauging

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the illegalities complained of by the applicant vis-à-vis the reason for the dismissal of the case seen on the decision, long drawn arguments are inevitable. It follows therefore that no valid illegality has been advanced by the applicant.

In upshot, as I have demonstrated above, the 2nd and 3rd reliefs are struck out for the reasons deliberated while determining each relief while the application is dismissed in respect of the 1st relief. The respondents will have their costs.

It is so ordered.



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A. MSAFIRI,

JUDGE

14/12/2022

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