

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

(CORAM: MWARIJA, J.A., KEREFU, J.A., And ISMAIL, J.A.)

CIVIL REFERENCE NO. 12 OF 2021

MOHAMED SALIMINI.....APPLICANT

VERSUS

THE ASSISTANT REGISTRAR OF TITLES.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

JUMANNE OMARY MAPESA.....3RD RESPONDENT

**(Application for Reference from the Ruling of a single Justice of the Court of
Appeal of Tanzania at Dodoma)**

(Korosso, J.A)

dated the 23rd day of August, 2021

in

Civil Application No. 31/03 of 2021

RULING OF THE COURT

13th & 20th February, 2024

KEREFU, J.A.:

This application for Reference arises from the ruling of a single Justice of this Court (Korosso J.A) dated 23rd August, 2021. By that ruling the single Justice dismissed with costs an application by the applicant for extension of time within which to lodge an appeal to challenge the decision of the High Court (Siyani, J.) dated 4th August, 2020 in Land Appeal No. 68 of 2018. The application was initiated by a letter of Dr. Lucas Charles Kamanija, learned counsel with Ref. No. KADV/CAT-DOM/REF.01 dated 27th

August, 2021 as prescribed by Rule 62 (1) (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

To appreciate the gist of this application, we find it apposite to narrate a brief background leading to this reference as summarized by the learned single Justice in her ruling. That, the applicant was the owner of the property No. 4876-DLR Plot No. 61 Block 23 situated in Bahi, Majengo Dodoma Region (the disputed property). He mortgaged the said property to obtain a loan facility from the former National Bank of Commerce (the NBC). It turned out that, the applicant defaulted to repay the said loan hence, the NBC assigned the mortgaged property to the Loans and Advances Realization Trust (LART) as a non performing asset. LART proceeded to realize the unpaid loan of TZS. 17,000,000.00 by sale of the mortgaged property. It advertised the said sale and the third respondent won the bid and purchased the said property at the tune of TZS. 15,000,000.00.

Subsequently, in 2003, the third respondent instituted a summary suit against the applicant in the District Court of Dodoma vide Civil Case No. 27 of 2003, seeking an order to direct the applicant to vacate the disputed property and to be granted vacant possession. The applicant

sought and was granted right to defend the suit. After a full trial, the suit was decided in favour of the third respondent.

On 23rd March, 2018, the applicant, unsuccessfully, wrote a letter to the first respondent requesting for rectification of the Title in respect of the disputed property to allow his name to be restored in the Register alleging that the transfer of the said property to LART and then to the third respondent was tainted with illegalities.

Aggrieved, the applicant lodged an appeal in the High Court vide Land Appeal No. 68 of 2018 which was dismissed on 4th August, 2020. Still unsatisfied, the applicant lodged a notice of appeal in this Court on 2nd September, 2020. He then applied for leave to appeal before the High Court vide Misc. Land Application No. 60 of 2020 which was granted on 2nd November, 2020. Thereafter, he requested for certified copies of the proceedings and the order granting leave which were availed to him on 12th November, 2020.

Since he did not lodge the appeal within the time prescribed by the law, he lodged Civil Application No. 31/03 of 2021 seeking extension of time within which to file the said appeal out of time. In the notice of motion, the applicant alleged main two grounds for the delay, that; **one**,

there is sufficient cause for the delay, (i) that, he was waiting for the High Court's proceedings and an order that granted him leave to appeal; (ii) that, he was looking for money to engage an advocate to pursue the matter; and (iii) the time spent by the advocate to prepare the application.

Two, that, the impugned decision is tainted with illegalities.

The application was strongly opposed by the respondents on account of failure by the applicant to account for each day of delay and that, the alleged illegalities were not apparent on the face of the record.

Having heard the parties, the learned single Justice dismissed the application with cost as she found that the applicant had failed to demonstrate good cause warranting grant of extension of time. Still undaunted, the applicant preferred this reference on the following grounds:

- 1. That, the honourable single Justice of Appeal erred in law and fact in holding that the applicant has failed to account for each day of delay;*
- 2. That, the honourable single Justice of Appeal erred in law in disregarding the applicant's allegations of illegalities of the impugned decision as good cause for extension of time;*
- 3. That, the honourable single Justice of Appeal erred in law and fact in holding that the six incidents expounding the alleged illegalities are found in the notice of motion and the*

applicant's written submissions and not in the affidavit in support of the application; and

4. That, the honourable single Justice of Appeal erred in law and fact in holding that the alleged illegalities are not apparent on the face of the impugned decision.

At the hearing of this reference, the applicant was represented by Dr. Lucas Kamanija, learned counsel whereas the first and second respondents were represented by Ms. Mariam Matovolwa, learned State Attorney. The third respondent enjoyed the services of Mr. Devis Nyabiri, learned counsel.

In his submission, in support of the reference, Dr. Kamanija adopted the above four grounds and intimated that he will argue the second and third grounds conjointly and the remaining grounds separately.

Starting with the first ground, Dr, Kamanija faulted the single Justice for holding that the applicant has failed to demonstrate good cause to warrant extension of time, while the applicant had properly managed to account for each day of delay in the affidavit in support of the application. To bring his point home, he referred us to pages 17 to 19 of the impugned ruling and insisted that, since at pages 7 to 8 of the said ruling, the single Justice had acknowledged that the applicant had narrated the reasons for

the delay in the affidavit, she was required to grant the application and not otherwise.

On the second and third grounds, Dr. Kamanija faulted the single Justice for ignoring the six incidents of illegalities indicated in the notice of motion by stating that the same were not included in the affidavit in support of application, while they were clearly reflected under paragraphs 11, 12 and 13 of the said affidavit. He contended that, it was improper for the single Justice to ignore the said illegalities which were properly before her and apparent on the face of the record . To support his proposition, he referred us to pages 21 and 22 of the impugned ruling and cited the case of **Mohamed Salum Nahdi v. Elizabeth Jeremiah**, Civil Reference No. 14 of 2017 [2019] TZCA 168: [10 June 2019: TanzLII].

On the last ground, Dr. Kamanija faulted the single Justice for holding that the alleged six incident of illegalities are not apparent on the face of the impugned decision. It was his argument that, the said illegalities were apparent on the face of the said decision. To justify his point, he referred us to ground 4 (d) in the notice of motion and pages 15 and 16 of the impugned decision. He thus urged us to consider as to whether the single Justice had properly addressed herself on the contents of the notice of

motion and supporting affidavit to arrive to that finding. He contended that, since accounting for the delay of each day is no longer the only ground under which the Court should exercise its discretionary powers to grant extension of time, the single Justice was required to consider the alleged illegalities and grant the applicant's application. Based on his submission, the learned counsel urged us to reverse the ruling of the learned single Justice as he said, it was based on wrong appreciation of facts and principles of the law.

In her response, Ms. Matovolwa opposed the application. As for the first ground, she argued that the single Justice properly applied the law and principles governing extension of time including the decisions of the Court in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) and **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 08 of 2016 [2018] TZCA 39: (6 August, 2018: TanzLII) and correctly found that the applicant had failed to account for each day of delay. She thus challenged the submission of her learned friend by arguing that, apart from the applicant's duty of accounting for each day of delay and narrating the reasons for the delay in his affidavit, the single Justice is required to consider, as to whether the said reasons amounted to sufficient and or good cause warranting extension of time. To

support her proposition, she referred us to Rules 10 and 62 of the Rules together with the principles governing the application of this nature articulated in **Farida F. Mbarak & Another v. Domina Kagaruki & 4 Others**, Civil Reference No. 14 of 2019 [2021] TZCA 600: [20 October 2021: TanzLII]. She then insisted that, the single Justice had wide and unfettered powers, which could only be interfered with, if there is misinterpretation of the law.

On the second, third and fourth grounds, the learned State Attorney argued that, there is nothing to fault the decision of the single Justice because all the alleged illegalities were not apparent on the face of record. It was her argument that, since the alleged illegalities were mainly challenging the action taken by the first respondent, they were supposed to be submitted before the High Court as grounds of appeal but not at this stage. To support her argument, she referred us to page 21 of the impugned ruling and argued that, the single Justice properly applied the principles governing issues of illegality pronounced by this Court in **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011] TZCA 4: (3 October, 2011: TanzLII), and concluded that the alleged illegalities require evidence and long-drawn arguments

hence, not apparent on the face of record. She maintained that the ruling of the learned single Justice is based on the grounds and facts submitted before her and the same cannot be faulted. As such, she urged us to dismiss the application with costs for lack of merit.

On his part, Mr. Nyabiri associated himself with the submission made by Ms. Matovolwa and also urged us to dismiss the application with costs for lack of merit.

In a brief rejoinder, Dr. Kamanija reiterated his earlier submission and insisted that the application be granted.

Having considered the submissions made by the learned counsel for the parties, the issue for our determination is whether the applicant has made out a case warranting reversal of the decision issued by the single Justice.

At the outset, we wish to state that, we are mindful of the legal principles governing references enshrined under Rule 62 of the Rules. The said principles have been interpreted by the Court in its previous decisions such as, **V.I.P. Engineering and Marketing Limited & 2 Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 [2007] TZCA 165: (26th September, 2007: TanzLII) and **G.A.B**

Swale v Tanzania Zambia Railway Authority, Civil Reference No. 5 of 2011 [2016] TZCA 863: (7th September, 2016: TanzLII). That:

- 1) On a reference, the full Court looks at the facts and submissions the basis of which the single Judge made the decision;*
- 2) No new facts or evidence can be given by any party without prior leave of the Court; and*
- 3) The single Judge's discretion is wide, unfettered and flexible; it can only be interfered with if there is a misinterpretation of the law.*

Now, before we apply the said principles in the matter at hand, we wish to start by stating that, the notice of motion before the learned single Justice was for extension of time to file an appeal. As such, we find it apposite to revisit, albeit briefly, the law regarding extension of time.

Pursuant to Rule 10 of the Rules, a party seeking for an order of the Court to exercise its judicial discretion to grant the application for extension of time to do a certain thing or act, must show good cause for failing to do what he was supposed to do within the time prescribed by the law. This Rule has been interpreted in various decisions of the Court including, **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil

Reference No. 08 of 2003 (unreported) and **Praygod Mbagwa v. Government of Kenya Criminal Investigation Department & Another**, Civil Reference No. 04 of 2019 [2019] TZCA 547: (3rd September, 2019: TanzLII).

It is also a fact that what constitutes good cause has not been defined, however, this Court has, in its various decisions stated number of factors to be considered. These are *whether or not the application has been brought promptly; the absence of any valid explanation for the delay and whether the applicant has accounted for each day of delay and the lack of diligence on the part of the applicant*. See, for instance, the decisions of this Court in **Tanga Cement Company Limited v. Jumanne D. Masangwa & Amos A. Mwalwanda**, Civil Application No. 06 of 2001 (unreported) and **Wambele Mtumwa Shahame** (supra).

It has also been held times without number that a ground alleging illegality may as well constitute a good cause for extension of time. Among the decisions include, **Principal Secretary Ministry of Defence and National Service Vs Divram P. Valambhia** (1992) TLR 387; **Lyamuya Construction Company Limited** (supra) and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 [2016] TZCA 302: (13th

October, 2016: TanzLII). In all these cases, the Court emphasized that an alleged illegality must be apparent on the face of record of the impugned decision. Specifically, in **Lyamuya Construction Company Limited**, (supra) the Court made the following observation: -

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view, be said that in VALAMBIA's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises point of law should, as of right, be granted extension of time if he applies for one.** The Court there 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 a long-drawn argument or process"*[Emphasis supplied].

Again, in **Ngao Godwin Losero**, (supra) the Court emphasized that, **"The illegality in the impugned decision should be clearly visible on the face of record"** [Emphasis added].

Now, in the application at hand, we have examined the notice of motion, supporting affidavit and submissions made before the single

Justice and found that, on the first ground, the reasons for the delay submitted by the applicant were that; **one**, he was waiting for the High Court's proceedings and an order that granted him leave to appeal; **two**, that, he was looking for money to engage an advocate to pursue the matter; and **third**, the time spent by the advocate to prepare the application.

It is on record that, the learned single Justice having considered the above reasons, the submissions made before her, together with the applicable law and the principles governing extension of time, she observed at page 17 of the impugned ruling that:

"Paragraphs 19-29 of the affidavit in support of the application over the days the applicant was waiting for the granted order for leave to appeal, seeking money to engage an advocate, time for the advocate to assess the record and the time used to prepare the current application. Subsequently, the process of filing the instant application as averred in paragraph 30. Can the reasons stated be said to be good cause for delay? I find not."

She then went on, at page 18 of the same ruling, after having been guided by our previous decision in **Wambele Mtumwa Shahaka** (supra) that:

"While acknowledging the applicant's right to representation, he failed to show special reasons for me to find that his financial constraints alone was a good cause in the delay to take necessary action in pursuit of justice. Despite our query above, we wonder under the circumstances whether it was diligent to spend 13-14 days to prepare the application, that is from 14/12/2020 to 28/12/2020 averred in paragraphs 22-26. Meanwhile, while I may sympathize with the applicant in failing to file the application electronically, but spending 7 days attempting to file without following up on what was the problem, cannot be said was an exercise engrained with diligence. Thus, for the foregoing reasons, we find that the applicant failed to account for each day of delay involved and that failure to do so leads the matter to fail."

While submitting on the first ground, Dr. Kamanija faulted the above analysis made and the finding of the learned single Justice by arguing that, having acknowledged that the applicant had narrated the reasons for the delay in the affidavit, the single Justice was required to grant the application. With profound respect, we are unable to agree with him on this aspect. Pursuant to Rule 10 of the Rules, and as correctly argued by the learned counsel for the respondents, the Court has the duty to analyze the reasons for the delay narrated in the applicant's affidavit in support of

the application and determine as to whether the same are good reasons warranting grant of extension of time.

In addition, in the application of this nature, the single Justice had wide and unfettered powers, which could only be interfered with, if there is misinterpretation of the law. Having considered the above finding of the learned single Justice, we find no justification to interfere with the decision of the single Justice. Thus, the first ground is without merit.

The second, third and fourth grounds on the alleged illegalities are straightforward and should not detain us. It is apparent that, all the six incidents of illegalities indicated in the fourth ground (a-f) in the applicant's notice of motion are mainly related to the action taken by the first respondent and not in the impugned decision. It is on record that, the single Justice having considered the said illegalities, found that they were not apparent on the face of the record. It is clear to us that, the learned single Justice at pages 21 to 22 of the impugned ruling, having taken cognizance of the settled law in many of our decisions, such as **Lyamuya** and **Ngao Godwin** (supra), she concluded that, the alleged illegalities by the applicant did not constitute an illegality and, if anything, it would only

be discovered upon a long-drawn argument. For the sake of clarity, the learned Single Justice stated that:

"When the above test is applied in the instant case clearly, for me to discern the alleged mis-directions, non-directions and irregularities by the High Court will require taking a long-drawn process to decipher them from the impugned decision, which essentially means, the illegalities alleged are not apparent on the face of the impugned decision."

Therefore, in the light of the above position of the law, we find no justification to fault the finding of the learned single Justice on this aspect. We thus agree with the submissions of the learned counsel for the respondents that, Dr. Kamanija's criticism on the learned single Justice's decision is, with respect, without any justification. We equally find the case of **Mohamed Salum Nahdi** (supra), he cited to us, distinguishable with the facts of this application because in that application, the applicant's ground of illegality indicated in the notice of motion was completely disregarded by the single Justice which is not the case herein. In the event, we also find the second, third and fourth grounds of the application to have no merit.

In view of the foregoing, we find the application for reference devoid of merit and it is hereby dismissed with costs.

DATED at **DODOMA** this 19th day of February, 2024.

A. G. MWARIJA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

The Ruling delivered this 20th day of February, 2024 in the presence of Mr. Constantino Gwivaa holding brief for Dr. Lucas Kamanija, learned counsel for the Appellant, Ms. Agnes Julius Makubha, learned State Attorney for the 1st and 2nd respondents and Mr. Constantino Gwivaa, learned counsel for the 3rd Respondent, is hereby certified as a true copy of the original.



F. A. Mtaranja
F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL