

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 79 OF 2016

JEHANGIR AZIZ ABDULRASUL APPLICANT

VERSUS

1. BALOZI IBRAHIM ABUBAKAR

2. BIBI SOPHIA IBRAHIM RESPONDENTS

(Arising from the Ruling of the of the Court of Appeal of Tanzania

at Dar es Salaam)

(Rutakangwa, Mbarouk, Luanda, JJJ.A)

Dated 30th day of October, 2015

In

Civil Revision No. 6 of 2015

RULING

14th & 22nd April, 2016

MJASIRI, J.A.:

By the notice of motion filed under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Court Rules), the applicant is applying for the following orders:-

- (1) Extension of time to serve the respondents with the application for review of the decision of this Court in Civil Revision No. 6 of 2015 dated October 30, 2015.*

(2) Extension of time for filing written submissions in respect of the application for review.

The application is made on the following grounds:-

- (i) The decision of nullifying the sale of property on plot No. 62 Msasani area in Dar es Salaam purchased by the applicant is a nullity and illegal.*
- (ii) The respondents were not served with Civil Application No. 8 of 2016 for reviewing the decision in Civil Revision No. 6 of 2015 nor have written submissions in support of the application being lodged within the period prescribed by law due to lack of proper instructions as the applicant was out of the country undergoing medical treatment.*

The application is supported by the affidavits of the applicant and Mr. Jamhuri Johnson, learned advocate who had the conduct of the case.

At the hearing of the application, the applicant was represented by Mrs. Crescencia Rwechungura and Mr. Jamhuri Johnson, learned advocates, while the respondents had the services of Mr. Beatus Malima and Mr. Joseph Nuamanya, learned advocates.

Initially the counsel for the respondent had filed a notice of preliminary objection presenting two (2) grounds of objection. However he opted to abandon the preliminary objection. Both counsel asked the Court to adopt the affidavit in support of the application and the affidavit in reply as an integral part of their submission. Mrs. Rwechungura also filed written submissions and relied on the same.

The applicant mainly relied on two grounds in order to justify the application for extension of time. The first ground being that the applicant was ill, and had to travel out of the country for medical treatment. Illegality was the second ground relied upon by the applicant, as the decision of the Court in Civil Revision No. 6 of 2015 was based on an incomplete record.

On his part, Mr. Malima strongly resisted the application. He submitted that the applicant has failed to come up with a valid explanation why no action was taken after the application was filed on January 18, 2016 and before the applicant travelled out of the country.

On the issue of illegality, Mr. Malima argued that it is not sufficient for the applicant to raise a ground of illegality, the illegality must be clearly established.

The basic issue for consideration and determination is whether or not the applicant has shown good cause for the delay. Rule 10 of the Court Rules provides as under:-

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act or required by these Rules, whether before or after the expiration of that time and after the doing of the act; and reference in these Rules to any such time shall be constructed as a reference to that time extended."

Rule 10 of the Court Rules provides for judicial discretion. The term good cause is a relative one and is dependent upon circumstances of each individual case. It is therefore upon a party to provide the relevant material in order for the Court to exercise its discretion. See **Ratnam v Kumarasamy and Another** (1994) 3 ALL ER 933 and **Regional Manager Tan Roads Kagera v Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 CAT (unreported).

According to the medical records attached to the applicant's affidavit, the applicant was hospitalized at the Agakhan Hospital between January 10 and January 16, 2016 before travelling out of the country for medical treatment. The illness of the applicant is sufficient to constitute good cause.

The applicant is also relying on the ground of illegality in respect of the decision being challenged. It is alleged that it was based on an incomplete record. The Court has a duty even if it means extending the time for the purpose of ascertaining the point and to take appropriate measures. See **The Principal Secretary, Ministry of Defence and National Service v Devram Valambia** (1992) TLR 182 and **VIP Engineering and Marketing**

Limited and Three Others v Citibank Tanzania Limited, Consolidated Civil References No. 6, 7 and 8 of 2001 CAT (unreported).

For the reasons stated hereinabove, I am of the considered view that good cause has been established. I accordingly extend to the applicant the time to serve the respondents with the application for review of the decision of this Court in Civil Revision No 6 of 2015 and to file written submissions in respect of the said application. The applicant has to do so within three (3) days from the delivery of this Ruling.

I make no order as to costs.

DATED at DAR ES SALAAM this 20th day of April, 2016.

S. MJASIRI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL