

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 102 OF 2015**

**QUALITY GROUP LIMITED ..... APPLICANT**

**VERSUS**

**TANZANIA BUILDING AGENCY ..... RESPONDENT**

**(Application for Extension of time to file Revision from the decision of the  
High Court of Tanzania at Dar es Salaam.)**

**(Mgeta, J.)**

**dated the 22<sup>nd</sup> day of October, 2014**

**in**

**Land Case/ Appeal No.221 of 2014**

**.....**

**RULING**

11<sup>th</sup> & 21<sup>st</sup> April 2016

**LUANDA, J.A.:**

Before me is an application for extension of time so as to enable the applicant to file an application for revision out of time. The application has been made under Rule 10 of the Court of Appeal Rules, 2009 (the Rules). The same was brought by a Notice of Motion supported by an affidavit. The reason for the intended revision was that the decision of the High Court is tainted with irregularities and illegalities.

Indeed, if the point of law at issue is the illegality of the decision being complained of, then that is a good cause within Rule 10 of the Rules for extending time. To hold otherwise would amount to permitting a decision which in law might not exist or stand. (See **Principal, Secretary, Ministry of Defence and National Service V. Devram Valambhia** [1992] TLR 185 and **Etierines Hotel V National Housing Corporation**, Civil Reference No. 32 of 2005 (CAT – unreported)). The question in this application is whether there is such illegality.

In his affidavit in support of the application, the Principal Officer of the applicant one Sessaiker Vaasudhevan affirmed and stated, *inter alia*, as follows, I reproduce the relevant paragraphs as hereunder:-

- 1. That I am the Principal Officer of the Applicant Company and therefore conversant with the facts I depone to below:-*
- 2. That on 23<sup>rd</sup> July, 2014 the Applicant instituted Land Case No. 221 of 2014 claiming against the Respondent for inter alia USD 101,828,754.00 being damages suffered for the Respondent's act of inducing the Applicant to breach the Agreement for*

*Redevelopment/rehabilitation of a housing Estate complex in Masaki, Dar es Salaam.*

- 3. That contemporaneous to the above suit, the Applicant also filed an Application for injunctive orders under a Certificate urgency, praying for an interim order ex-parte directing attachment before judgment, the Respondent's property on Plots No. 1403/2 and 1404 Masaki Dar es Salaam as security, pending hearing and final determination of the application inter-parties and later pending determination of the suit.*
- 4. That on 27<sup>th</sup> day of August, 2014 the Honorable Court granted the above prayers ex-parte and the hearing of the application inter-parties was set to proceed on 18<sup>th</sup> day of September, 2014.*
- 5. That on 18<sup>th</sup> day of September, 2014 when the application came for hearing the Respondent raised two points of Preliminary Objection that the Respondent is not capable of being sued and its properties are not subject to attachment and that the application is time barred.*
- 6. That the Preliminary Objections were disposed of by way of written submissions. In its decision dated 2<sup>nd</sup> day of*

*October, 2014 the High Court dismissed the main suit instead of the Application which was being challenged.*

- 14. I state further that I have been advised by my lawyers that the decision sought to be revised is tainted with irregularities and illegalities in that the High Court while determining preliminary objections in respect of competency or otherwise of the Application, it dealt with the competency of the suit itself, and thereby dismissing the suit instead of the Application.*

On the other one Mr. Hangi Chang'a learned State Attorney from the Hon. Attorney General's Chambers countered the affidavit of the applicant by an affidavit in reply as follows:-

- 2. That the contents of paragraphs 1,2,3,4,5,7,9,10 and 11 the affidavit are noted.*
- 3. That the contents of paragraph 6 of the affidavit are noted to the extent that the main suit was dismissed. But the rest of the facts are strongly denied.*

*7. That the contents of paragraph 14 of the affidavit are noted as they are facts best known to the Applicant.*

In this application Mr. Mpaya Kamara learned counsel represented the applicant; whereas the respondent was represented by Mr. Sylvester Mwakitalu learned Senior State Attorney assisted by Ms. Siliva Matiku learned State Attorney. The parties filed their written submissions.

Mr. Kamara adopted his written submission. He however insisted that the decision of the High Court is tainted with illegality in that instead of disposing the application for injunction, the learned judge disposed of the suit for being time barred. That, he said, was not proper. He urged the Court not to go into the merits at this stage as was started at page 24 in **Balozi Abubakari Ibrahim & Another V M/S Benandys Limited and Two Others**, Civil Revision No. 6 of 2015 (CAT-unreported). Paragraph 2 of page 24 of the above cited case reads.

*"It is obvious to us that the fact that an applicant does not "have to show that his appeal has a reasonable*

*prospect of success or even an arguable case”,  
reinforce the ...”*

He prayed that the application be allowed.

Responding Mr. Mwakitalu also adopted his written submission and added that the applicant did not manage to establish illegality and failed to account for the delay. Mr. Mwakitalu said the applicant must account each and every day of the delay. The application is devoid of merit. The same should be dismissed with costs, he concluded.

In rejoinder Mr. Kamara said the issue of illegality is covered under paragraph 14 of the affidavit of the applicant. The issue is whether in law it was proper to dismiss a suit in an application. As regards to the failure to account the days for the delay he said once illegality is shown that is enough.

I have carefully gone through the record of the application. I wish to state at the outset that the applicant failed to establish her case. I will explain. All along the applicant maintained that there was an application

for an order of injunction in the main suit and that in that application the learned judge dismissed the suit (See Para 14 of the affidavit of the applicant). Those facts were vigorously denied by the respondent vide para 7 of Mr. Chang'a. The learned judge all along made reference to a suit and not to an application as contended by the applicant in his ruling in respect of the preliminary points of law raised. This is what he said, I reproduce:-

### **RULING**

*In this **suit**, the plaintiff is praying for judgment and decree against the defendant, Tanzania Building Agency, that the defendant has breached an agreement for redevelopment/rehabilitation of a Housing Estate Complex in Masaki, Dar es Salaam. The plaintiff prays for specific and general damages.*

*The defendant raised two preliminary objections on points of law against the **plaintiff's suit** as hereunder;*

- a). The applicant is not capable of being sued and its properties are not subject to attachment.*
- b). The application is time barred.*

*These objections were argued by way of written submissions. In support of the objections, Mr. Edson Mweyunge, Learned Principal State Attorney submitted that **this suit** is time barred as per item 21, part II of the Schedule to the law of Limitation Act 1971, Cap 89 which provides limitation period of sixty (60) days **for suits** which no limitation is provided.*

*On the second limb of the objections, Mr. Mweyunge argued that section 3(6) (a) and (b) of the Executive Agencies Act, Cap 245 prohibits suits against the defendant for matters not arising from contracts.*

In his concluding remarks, the judge said, I quote:-

*"In the end result, I uphold the preliminary objections raised by the defendant and I proceed to dismiss **this suit** with costs. It is so ordered."*

Unfortunately, the affidavit of the applicant does not contain any annexure of an application for an order of injunction to back up para 3 of the affidavit of the applicant as it used to be in such applications. It would make a big difference if the application for an injunction would have been



annexed so as to support her version and the Court to satisfy itself that such application was made. In absence of that, it cannot be said that there was such an application. Since there is no assurance the applicant to have applied for an order of injunction, I am unable to agree with Mr. Kamara that there was such an application and the learned judge wrongly dismissed the suit instead of the application.

Without further ado, the applicant failed to establish her case and so the application is devoid of merit. The same is struck out with costs.

It is so ordered.

DATED at DAR-ES-SALAAM this 19<sup>th</sup> day of April, 2016.

B.M. LUANDA  
**JUSTICE OF APPEAL**

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

  
Z.A. MARUMA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**