IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 265/01 OF 2016

1. JEHANGIR AZIZ ABDULRASUL
2. RHINO AUCTION MART & COURT BROKER }.....**APPLICANTS**
3. M/S BENANDY'S CO. LIMITED

VERSUS

1. BALOZI IBRAHIM ABUBAKAR
2. BIBI SOPHIA IBRAHIM } .....**RESPONDENTS**

(Application for extension of time to file another application for review of the decision of the Court of Appeal of Tanzania at Dar es Salaam)

(Rutakangwa, Mbarouk, Luanda, JJJ.A)

dated the 30th day of October, 2015
in
Civil Revision No. 6 of 2015

RULING

14th February & 20th March, 2017

MKUYE, J.A.:

This is an application for extension of time to file another application for review of the decision of this Court (Rutakangwa, J.A, Mbarouk, J.A, and Luanda, J.A.) Civil Revision No 6 of 2015 dated 30th October, 2015 which had set aside the sale of a house on Plot No. 62 in Msasani area Dar es Salaam, the property of the respondents. The application is brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It was filed on 6/9/2016 and it is supported with the joint affidavit

of the applicants' advocates Ms. Crescencia B. Rwechungura and Mr. Jamhuri Johnson sworn on the 2nd day of September 2016.

Mr. Joseph Nuwamanya filed the affidavit in reply for both respondents on 11/11/2016. The applicants filed the written submission on 6/10/2016 and the respondents' reply to the written submission was filed on 11/11/2016.

In order to appreciate the background of this matter, I feel prudent to outline first the brief sequence of events.

This Court *suo moto* through Civil Revision No.6 of 2015 revised the proceedings, Judgment, Decree, Rulings and orders in Land Case No 4 of 2010 and set aside the sale of a house on Plot No 62 situated at Msasani area Dar es Salaam, the property of the respondents which was auctioned by the High Court (Land Division) at Dar es Salaam to satisfy the transferred decree of the said Land Case No 4 of 2010 of the High Court (Land Division) at Moshi Registry, which was entered in favour of the 3rd respondent (1st applicant herein) and against the respondents herein. The Court decided to set aside the said sale on the ground of irregularities of the sale and ordered the 1st applicant herein to be refunded his purchase price by whosoever was holding it.

The applicants after being dissatisfied with that decision they filed an application for review which was Civil Application No.8 of 2016 (see annexure B) which forms part of the record and moved the Court to review its decision in Civil Revision No.6 of 2015. Their ground for review was that in "determining Civil Revision No 6 of 2015 the parties were not heard by the Court on the sale of the Respondents' property on Plot 62 Msasani area Dar es Salaam". The Court dismissed the application on the basis that the execution proceedings which led to the sale of the house in dispute was among the crucial issues in the revision proceedings and both sides addressed the Court through written and oral submissions. In other words they were afforded an opportunity to be heard on that aspect.

Still dissatisfied with the decision in Civil Revision No 6 of 2015, the applicants are now moving this Court to determine the application for extension of time to file another application for review on the grounds that:

> *1. There are manifest errors on the face of the record of Civil Revision no.6/2015 which have caused miscarriage of Justice to the applicants. The court had failed to take into consideration conditions set by law in nullifying the sale of the respondent's house on plot no 62 Msasani based*

on irregularities of the sale which render the decision illegal.

2. The application could not be lodged within time prescribed by the Court of Appeal Rules of 2009 because the applicants were prosecuting another application for review on a different ground based on the same decision of Civil Application No. 6/2015.

When the application was called on for hearing both parties were represented. While the applicants were advocated by Ms. Rwechungura and Mr. Jamhuri Johnson, the respondents had the services of Mr. Stolla, learned advocate. Before arguing the merits of the case the learned counsel for both parties were required to address me on the propriety of the application in terms of rule 66(7) of the Tanzania Court of Appeal Rules, 2009.

Ms. Rwechungura, without explaining the gist of the provision stated that they are seeking extension of time to enable them file another application for review on the ground of illegality of the decision in Civil Revision No 6 of 2015 which nullified the sale of plot No 62 as it was not addressed in the previous application for review. On the part of the respondents, Mr. Stolla learned advocate categorically stated that the spirit of rule 66(7) of the Rules is to bar any application for review after

the first review is made and finally determined. He added that the applicants ought to have outlined all the grounds in the previous application for review. For that matter, he argued, the application at hand was not maintainable.

With regard to the main application, the applicants argued that the reason for delay in filing the application for review is because they were prosecuting another application for review No 8 of 2016 against the decision in Civil Revision No 6 of 2015. Ms Rwechungura added that the other reason for the application is the illegality of the decision in Civil Revision No 6 of 2015 which they discovered much later that the conditions set out in Order XXI rule 53(3), 66(1) and 67 of Civil Procedure Code, Cap 33, RE 2002 regarding nullification of sale of Plot No 62 were not met. She submitted further that the nullification of sale was issued as if there was a total absence of proclamation. She was of the view that if the decision is left to stand it would mislead the lower courts and cause injustices to people. She referred to me the case of **The Principal Secretary, Ministry of Defence and National Service Vs Devram P. Valambhia (1992) TLR at pg. 387** in which the issue of illegality was found to amount to a good cause, to substantiate her argument.

In response, the respondents through their affidavital information and submission in reply, opposed the application in that the applicants have failed to account for the time between 22/7/2016 when Civil Application No 8 of 2016 was determined to 6/ 9/2016 when this application was filed. Mr. Stolla apart from adopting their written submission contended that the applicants ought to have outlined all the facts they deemed as illegalities and include them in the first application. He also added that no chances of success of the intended application has been shown by the applicants. The case of **Henry Muyaga Vs TTCL Application No 8 of 2011** as quoted in **Samwel Sichone VS Bulebe Hamisi Civil Application No 8 of 2015** was cited in support of the proposition.

Ms. Rwechungura in rejoinder stressed that the ground of chances of success in the intended application cannot be laid down at this stage.

Having heard the arguments by both learned counsel, I think the issue for determination is whether the applicants have shown sufficient cause to warrant extension of time sought.

It is now fairly settled law that in an application for extension of time to file an application for review the applicant must not only satisfy the court that there is/ are sufficient cause(s) for delay but must also

indicate under which ground under rule 66(1) of the Rules, 2009 his application for review will base if the extension sought is granted. These are the two requirements which must be met in applications of this nature. In the case of **Hamza Ramadhani@Burutu @Suka & Another Vs Republic Criminal Application No 2 of 2013 (Unreported)** it was stated:

> *" Rule 10 governing extension of time upon good cause being shown must for purposes of extension of time to apply for review, relate to the grounds for review set down under rule 66(1)."*

As regards the first requirement as already hinted, an extension of time can be granted upon good cause for delay of doing any act has been established. This is so stipulated under rule 10 of the Rules. The said provision provides as hereunder:

> *"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 authorized or required by these Rules,** whether before or after the expiration of that time and whether before or after*

the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

[Emphasis supplied].

The applicants' main reason for the delay as shown on their Notice of Motion and in particular ground No 2 and as elaborated by Ms Rwechungura is that they were prosecuting another application for review on a different ground based on the same decision of Civil Revision No.6/2015. The learned counsel clarified that they discovered much later that the decision was illegal as the rules under the Civil Procedure Code were not complied with. There is no doubt that prosecuting another case but diligently can in certain circumstances amount to a good cause for the delay. This was stated in the case of **Fortunatus Masha Vs Wiliam Shija and Another** (1997) TLR 154 (CA) *inter lia*, that:

"A distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal

for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalised by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact in the present case, the applicant acted immediately after the pronouncement of this Court striking out the first appeal."

The applicants' delay because of prosecuting "another *review*" could be a sound explanation for the delay but subject to other factors such as diligence in prosecuting it, time taken in filing the present application and others. However, as pointed out by Mr. Stolla, and seems to me rightly so, the applicants have not accounted for delay between 22/7/2016 when Civil Application No. 8 of 2016 was determined and 6/9/2016 when the present application was filed. It is the law in this jurisdiction that every day of delay must be accounted for. This was stated by the Court in

Bushiri Hassan Vs Latifa Lukio Mashayo Civil Application No. 3 of 2007 (Unreported). The Court observed:

> *"Delay even of a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

In the case at hand, the applicants have not brought any explanation accounting for the delay between the date of determination of Civil Application No. 8 of 2016 (22/7/2016) and the date when the present application was filed on (6/9/2016). This was about 45 days whose delay has gone unaccounted for. But even if I would have found and held that the applicants have accounted for every day of delay, it is common ground in this case that the applicants after being dissatisfied with decision in Civil Revision No. 6 of 2015 lodged an application registered as Civil Application No. 8 of 2016 for review of that decision. This indicates that the applicants knew another avenue of pursuing their right through review and they utilised it. I, however, like Mr Stolla, fail to comprehend as to how that application prevented them to include the grounds for review contemplated by the present application for an extension of time to be granted while they had prudently filed it on the

ground that they were not heard on the issue of sale of house No. 62 Msasani area. Under normal circumstances, as rightly submitted by Mr Stolla, they were reasonably expected to have included all the grounds they deemed irregular or illegal to be reviewed in that application rather than coming with a lame excuse that they discovered it much later after the decision was delivered. In order for the reason of prosecuting another case to form a good cause, such prosecution must be done diligently and every period spent for that process and thereafter before filing the present application should have been accounted for. This, the applicants have not done. This, therefore, as already said, cannot amount to good reason for delay.

The applicants' other reason for this application is the illegality which is alleged to have been discovered much later after the decision in Civil Revision No. 6 of 2015 was delivered. Ms. Rwechungura learned counsel for the applicants is of the view that since the issue involves illegality of the impugned decision, then it is a good or sufficient cause to warrant this court to extend time within which to file another application for review on the basis of **Valambhias' case (supra).** I have read the said case. In that case it was held that:

"Where a point at issue is the illegality or otherwise of the decision being challenged, that is a point of law of sufficient importance to constitute a sufficient reason within rule 8 of the Court of Appeal Rules to overlook non-compliance with the requirements of Rules and to enlarge the time for such compliance "

There is no doubt that illegality of the decision as per **Valambhias' case (supra)** amounts to sufficient cause for extension of time. It can be relied upon even if other reasons are not met. However, I am of the view that the Valambhia's **case (supra)** is distinguishable as the rule laid therein arose from facts which are different from the facts in the case at hand. The rule in that case emanated from the appeal from the ruling of the High Court **in which the Government which was not a party to the suit** was condemned to pay Valambhia a sum of money to the tune of US Dollars 39,823,543.25 at his overseas bank account which was part of the of proceeds of a contract between the **Government** and **Messrs Transport Equipment Ltd (TEL)** whom apparently had sued Valambhia in the High Court. It did not emanate from a second application for review. It follows that the issue of illegality raised by the applicant cannot amount to good cause in the circumstances of this case.

I also take note of the decision in the case of **Samwel Sichone (supra)** when interpreted the judicial discretion to extend time while quoting the case of **Henry Muyaga (supra)** relied by Mr. Stolla to show that the applicants failed to show chances of success of the intended review. I subscribe to Ms. Rwechungura submission that it cannot be shown at this stage because doing so would amount to going into the merits of the review sought to be filed should the time be extended.

As regards the second requirement, as stated earlier on the applicant is required to show the grounds in rule 66(1)(a) to (e) of the Rules their application for review will rely on if the Court grants the extension of time sought. However, the applicants have neither shown nor related in their Notice of Motion, affidavit in support of the application or written submission any of the grounds envisaged in rule 66(1) of the Rules to be based should the extension of time be granted. Mere submission in Court of contravention of rules 53, 66 and 67 of the Civil Procedure Code by the learned counsel without grounding them under rule 66 (1) of the Rules is not enough.

Be it as it may, even if the applicants had indicated the grounds under rule 66(1) of the Rules the issue that follows is whether they can legally file another application for review. This was the essence of issue

of propriety of the application in terms of rule 66(7) of the Rules that was raised by the Court.

Rule 66(7) of the Rules provides:

> *"Where an application for review of any judgment and order has been made and disposed of, a decision made by the court on the review shall be final and no further application for review shall be entertained in the same matter."*

The provisions of the above quoted rule are not ambiguous. As Mr Stolla correctly submitted, they strictly prohibit any application for review on the matter on which another application for review was made and determined by the Court as such decision becomes final.

This was also reiterated in the case of **AMI Tanzania Ltd Vs OTTU on behalf of P. L. Assenga & Others** Civil Application No 151 of 2013 where it was stated:

> *"...I entirely agree with both learned counsel that a decision arising from a review is final and a party to it is barred from filing another application for*

review. This is what Rule 66(7) of the Rules is all about."

The logic behind this rule, I think, is that if such applications are allowed by the Court there would be multiplicity of applications and the litigation will never come to an end. It means that since this Court determined an application for review through Civil Application No. 8 of 2016 on the decision in Civil Revision No. 6 of 2015, by virtue of rule 66(7) of the Rules, it cannot entertain another application for review on the same decision. If the applicants failed to raise all the grounds in that application, then they should shoulder the blame. The course taken by the applicants to bring grounds for review in piece meals, is legally inappropriate and does not augur well with the expeditious disposition of cases; a matter falling within the vision of Judiciary in the country.

But again, as if to clinch the matter, it has been well held by this Court that powers of review should be invoked sparingly. This was stated in the case of **Patrick Sanga Vs Republic Criminal Appeal No 80 of 2011** that:

"In any properly functioning justice system like ours, litigation must have finality and a judgment of the final court in the land is final and its review should be an exception."

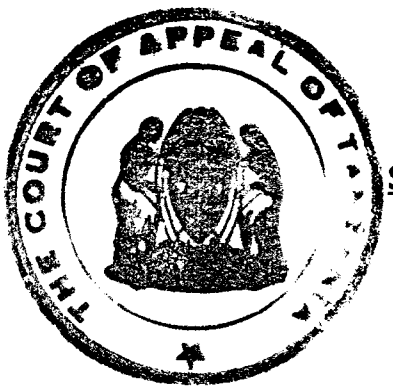
In my considered view, in what I have endeavoured to demonstrate above, allowing the present application would not only be contrary to the law but also would amount to an abuse of the court process. I say so because parties would now lodge multiple applications on pretext of discovery of new matters after previous similar matters have been determined against their wish. The applicants must understand that it is in the interest of justice that litigation must come to an end. (See **P.9219 Abdon Rwegasira Vs The Judge Advocate General,** Criminal Appeal No 5of 2011(Unreported)

In the final event, I find that the applicants' application for extension of time to enable them file another application for review to have no merits as the intended application is barred by rule 66 (7) of the Rules. Consequently, the present application is without merit and, therefore, dismissed with costs.

DATED at **DAR ES SALAAM** this 14th day of March, 2017

R. K. MKUYE
JUSTICE OF APPEAL

I certify that this is a true copy of the original



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