

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

CIVIL APPLICATION NO. 105/15 OF 2019

- 1. KEITH HORAN**
- 2. Z. HOTEL**

}

..... APPLICANTS

VERSUS

- 1. ZAMEER SHERALI RASHID**
- 2. KAMATI YA MAENDELEO SHEHIA YA NUNGWI**
- 3. KATIBU KAMATI YA MAENDELEO SHEHIA YA NUNGWI**

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..... RESPONDENTS

**(Application for extension of time from the decision of the High Court of Zanzibar at Vuga)
(Mohamed, J.)**

**dated the 5th day of January, 2018
in
Civil Application No. 57 of 2017**

.....

RULING

5th & 10th December, 2019

NDIKA, J.A.:

Proceeding by notice of motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicants seek extension time within which to apply for revision of the ruling of the High Court of Zanzibar at Vuga (Mohamed, J.) in Civil Application No. 57 of 2017 dated 5th January, 2018. The application is predicated on three grounds as follows:

"i. The applicant is aggrieved by the decision of the High Court delivered on 5th January, 2018 by Hon. Rabia Hussein Mohamed, J. in Miscellaneous Civil Application No. 57 of 2017 as it is tainted

with illegalities for being composed by the Judge without giving the applicant an opportunity and the right to be heard as required by law.

ii. The applicant filed an application for revision before this Court which on 28th day of November 2018 the Court struck out for being time-barred due to the fact that the order sought to be revised was supplied late to the applicant.

iii. The applicant has been diligent in prosecuting this case and the reasons for the delay are not caused by negligence but for the grounds advanced in the accompanying affidavit.”

The notice of motion is supported by an affidavit made by Mr. Omar Said Shaaban, an advocate who had the conduct of the matter on behalf of the applicants. In response, Mr. Iss-haq Ismail Shariff, an advocate representing the first respondent, deposed an affidavit in reply. The second and third respondents elected to file no affidavit in reply.

The essential facts of the matter as can be gleaned from the record are as follows: on 1st June, 2016 the applicants filed Miscellaneous Civil Application No. 14 of 2015 seeking extension of time to file a notice of appeal and an application for leave to appeal to this Court against the decision of the High Court at Vuga (Mwampashi, J.) delivered on 14th August, 2015 in Civil Appeal No. 54 of 2014 on a matter that originated from the Land Tribunal for Zanzibar at Vuga. Mohamed, J. granted that application vide her ruling dated 15th June,

2017 but delivered on 17th July, 2017, extending the period for fourteen days. On 28th July, 2017, the applicants lodged a notice of appeal as well as an application for leave to appeal (Civil Application No. 33 of 2017). All the same, on 6th November, 2017, Issa, J. struck out the aforesaid application for leave on the ground that there was a variance between the dates on which Mohamed, J.'s ruling was signed and delivered and, for that reason, it was unclear to him whether the application for leave was lodged within the fourteen days' period extended by Mohamed, J. As a result, apart from striking the aforesaid application for leave, Issa, J. directed the applicants to take necessary steps to have the variance of the dates rectified.

Following Issa, J.'s direction, the applicants moved Mohamed, J. vide Civil Application No. 57 of 2017 made under sections 129 and 130 of the Civil Procedure Decree, Cap. 8 of the Laws of Zanzibar for correction of the variance in the dates of the ruling in Miscellaneous Civil Application No. 14 of 2015. Mohamed, J. was unimpressed as she dismissed the matter summarily on 5th January, 2018 on the ground that there was no fault regarding the date of the ruling sought to be corrected and that the hearing of the said application (Civil Application No. 57 of 2017) would be a waste of time of the court.

Aggrieved, the applicants moved this Court vide Civil Application No. 111/15 of 2018 for revision of the aforesaid decision by Mohamed, J.'s order.

That application came to naught as the Court struck it out on 28th November, 2018 on the ground that it was time-barred. To resuscitate their quest for revision, the applicants lodged this matter for extension of time on 7th December, 2018, about ten days after the initial application for revision was struck out.

At the hearing of the application, Mr. Haji Suleiman Tetere and Mr. Omar Said Shaaban, learned advocates, appeared for the applicants while Mr. Isshaq Ismail Shariff, learned counsel represented the first respondent. Messrs. Haji Machu Ali and Ali Mussa Ameer entered appearance, respectively, for and on behalf of the second and third respondents as principal officers.

Before the hearing began in earnest, Mr. Shariff abandoned a preliminary objection to the application that he had duly lodged on 25th November, 2019.

In his oral argument, Mr. Tetere adopted the contents of the notice of motion, the founding affidavit and the written submissions in support of the application. Briefly, it is contended that the decision of Mohamed, J. in Miscellaneous Civil Application No. 14 of 2015 that is sought to be revised is manifestly illegal in that it was made without the applicants having been heard on the merits; that the applicants' initial application to the Court on revision of the aforesaid decision of Mohamed, J. was struck out for being time-barred,

the delay to lodge that matter within the prescribed time having arisen from the failure to be supplied by the High Court's Registry with a copy of the drawn order which had to be included in the application for revision; and that the applicants have been diligent but not negligent all along in prosecuting the matter. Reliance was placed on several decisions of the Court including **Abbas Sherally & Another v. Abdul S.H.M. Fazalboy**, Civil Application No. 33 of 2002; **Alpitour World Hotels & Resort S.P.A and Two Others v. Kiwengwa Limited**, Civil Application No. 3 of 2012; **Samweli Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17/2017; and **Philemon Mang'ehe t/a Bukine Traders v. Gesbo Hebron Bajuta**, Civil Application No. 8 of 2016 (all unreported). Further reference was made to **Fortunatus Masha v. William Shija and Another** [1997] TLR 154. The learned counsel finally beseeched that time be enlarged for the intended application for revision to be lodged as prayed.

On the other hand, Mr. Shariff submitted, relying on the affidavit in reply, that there was no good cause for condonation of the delay in lodging the intended application for revision. He bemoaned that the application was calculated at delaying the first respondent from enjoying the fruits of the decree in appeal issued by the High Court in his favour thereby prolonging the

applicants' occupation of the disputed property that started in 2008. He thus prayed that the matter be dismissed with costs.

The second and third respondents stated that they were contented with the application being granted as presented.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether there is a good cause warranting enlargement of time to lodge the intended application for revision.

To begin with, it bears restating that the Court's power for extending time under Rule 10 of the Rules is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable definition of the phrase "good cause", but the Court consistently considers factors such as the length of the delay involved; the reasons for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the Court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged: see, for instance, this Court's unreported decisions in **Dar es Salaam City Council**

v. Jayantilal P. Rajani, Civil Application No. 27 of 1987; **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001; **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013; and **William Ndingu @ Ngoso v. Republic**, Criminal Appeal No. 3 of 2014. See also **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185; and **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

What is central to the instant application is the fact that the present matter was lodged in the aftermath of the applicants' initial application for revision of the aforesaid decision by Mohamed, J. having been struck out by the Court on 28th November, 2018 on the ground that it was time-barred. It is noteworthy that the said matter was found time-barred because it was lodged on 27th March, 2018, which happened to be ten days after the period of sixty days prescribed by the provisions of Rule 65 (4) of the Rules had expired. In this application, the applicants attributed the aforesaid ten days' delay to the lateness in being supplied by the High Court's Registry with a copy of the drawn order sought to be revised which they had to attach to the application for revision. This contention was never challenged by the respondents. I am,

therefore, of the view that the applicants are, without doubt, not at fault for the delay that rendered their application for revision time-barred.

Furthermore, the delay that arose from the applicants' pursuit of their first botched application for revision certainly amounted to an explicable technical delay. For the applicants having filed and pursued that initial application which was penalised by striking out, that fact cannot be used yet again to determine the aptness of applying for extension of time to lodge a fresh application for revision – see **Fortunatus Masha** (supra). See also **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd.**, Civil Reference No. 18 of 2006; **Zahara Kitindi & Another v. Juma Swalehe & 9 others**, Civil Application No. 4/05/2017; **Yara Tanzania Limited v. DB Shapriya and Co. Limited**, Civil Application No. 498/16/2016; **Vodacom Foundation v. Commissioner General (TRA)**, Civil Application No. 107/20/2017; **Samwel Kobelo Muhulo** (supra); and **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassor**, Civil Application No. 342/01/2017 (all unreported).

As hinted earlier, to breathe life into their quest for revision the applicants on 7th December, 2018 lodged the present application for condonation of the delay. This happened only nine days after the initial application for revision was struck out by the Court. I do not consider this intervening period inordinate

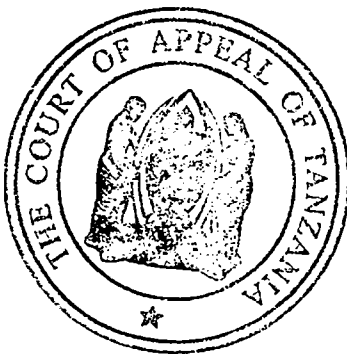
in the circumstances of this matter. In the premises, I am decidedly of the view that the applicants were not guilty of lassitude as they took action with promptitude to refresh their intended pursuit of revision.

In the upshot, I find merit in the application, which I grant. In consequence, I order the applicants to lodge their intended application for revision within sixty (60) days from the date of the delivery of this ruling. Costs shall follow the event in the intended revision.

DATED at **ZANZIBAR** this 9th day of December, 2019.

G. A. M. NDIKA
JUSTICE OF APPEAL

The Ruling of the Court delivered this 10th December, 2019 in the presence of Mr. Maulid Abdalla Juma, the Applicant's and Mr. Maulid Abdalla Juma holding brief for Mr. Ishaq Shariff, Counsel for 1st Respondent and in the absence of the 2nd Respondent is hereby certified as a true copy of the original.




A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL