IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

CIVIL APPLICATION NO. 440/08 OF 2017

JACOB SHIJA ..... APPLICANT

VERSUS

1. M/S REGENT FOOD & DRINKS LIMITED
2. THE MWANZA CITY COUNCIL ..... RESPONDENTS

(Application for extension of time to apply for documents for appeal purposes, serve the respondent and lodge the appeal from the Judgment of the High Court of Tanzania at Mwanza)

(Mruma, J.)

dated the 10th day of March, 2014
in
Land Appeal No. 65 of 2010

RULING

2nd & 5th April, 2019.

MWAMBEGELE, J.A.:

By a notice of motion taken out under Rules 10, 84 (1) and 90 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 – GN No. 368 of 2009 (hereinafter referred to as the Rules), the applicant applies for extension of time to serve the respondents with the notice of appeal, to present a letter to the Registrar requesting for necessary documents for the preparation of the record of appeal and to lodge an appeal out of time. It is supported by an affidavit deposed by Jacob Shija; the applicant. The same is resisted by

an affidavit in reply duly affirmed by Pankaj Suchak, the Chief Executive Officer of the first respondent. The second respondent did not file any affidavit in reply.

The application was argued before me on 02.04.2019 during which the applicant appeared in person, unrepresented. Mr. Alex Banturaki, learned advocate appeared for the first applicant. Mr. Kitia Turoke and Mr. Joseph Hungwa, learned solicitors, joined forces to represent the second respondent. Fending for himself, the applicant adopted the notice of motion and the affidavit as well as the written submissions in its support of the application. It is deposed in the affidavit supporting the motion and argued in the written submissions that the main reasons why the applicant could not timely take steps for which he is applying for extension are: little or no knowledge of the laws of the land and the language of the court on the part of the applicant. For these reasons, the applicant prayed that he be granted the extensions sought so that he can assail the decision of the High Court (Mruma, J.) dated 10.03.2014 in Land Appeal No. 65 of 2010 whose leave to appeal to the Court was granted by the same High Court (Maige, J.) on 16.02.2017. To buttress the proposition that good cause has been shown therefore the extensions sought should be granted, the

applicant referred me to **Shanti v. Hindocha and others** [1973] 1 EA 2017; the decision of the now defunct Court of Appeal for East Africa.

The first respondent resisted the application with all efforts available. After adopting the contents of the affidavit in reply save for some selected para therein which referred to the attack that the application ought to have been a second bite, Mr. Banturaki submitted that the applicant has not supplied good cause to warrant the Court exercise the discretion to grant the orders sought. To succeed in an application of this nature, Mr. Banturaki submitted, an applicant must show good cause which task the applicant has miserably failed to do. To bolster this argument, he cited to me **Inspector Sadiki and Others v. Gerald Nkya** [1997] TLR 290. Mr. Banturaki also cited **Dr Ally Shabbay v. Tanga Bohora Jamaat** [1997] TLR 305 to beef up his argument that rules of procedure must be followed by filing applications timely and showing good cause upon delay.

For his part, Mr. Turoke, solicitor of the second applicant, had no objection to the application, stating that any verdict would not affect the second respondent.

I have dispassionately considered the notice of motion, the flanking affidavit in its support, the rival submissions as well as the authorities cited by the applicant and the first respondent. Having so done, I find it apt to state at this stage that it is now settled that an application under rule 10 of the Rules, except on claims of illegality, will only succeed upon an applicant showing good cause. For easy reference, I take the liberty to reproduce the rule hereunder. It provides:

> *"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].

In the light of the above quoted rule, I wish to restate that the power of the Court to extend time under the rule is broad and discretionary and, as rightly submitted by Mr. Banturaki, can only be exercised if an applicant shows good cause for the delay. What amounts to good cause cannot be

laid by any hard and fast rules but are dependent upon the facts obtaining in each particular case. That is, each case will be decided on its own merits, of course taking into consideration the questions, *inter alia*, whether the application for extension of time has been brought promptly, whether every day of delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant – see: **Mbogo v. Shah** [1968] E A 93, **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007, **Tanga Cement Company Limited v. Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 and **Yusufu Same and another v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (all unreported decisions of the Court).

In the instant application, the applicant's main reasons why the steps for which extension is sought in the present application could not be taken timely, as is apparent in the affidavit and the written submissions, is that he has little or limited knowledge of the laws of the land as well as that he is not conversant with the language of the court. Let the applicant speak

for himself as gleaned from the affidavit supporting the motion and in the written submissions. This is apparent in paras 6 through to 8:

> *"6. That before the dust settle (sic) and, upon instructing a learned person, it was realized that the necessary steps have not been taken as follows:*
>
> *6.1 The notice of appeal does not indicate as to whether it was served to the Respondents within the prescribed time limit, if any at all;*
>
> *6.2 There is no clear record as to whether the Applicant ever wrote to the Deputy Registrar requesting to be supplied with for necessary documentation for the preparation of the records of appeal.*
>
> *6.3 If the answer in paragraph 6.2 above is in the affirmative, the same was served to the Respondents within prescribed time.*
>
> *7. That in relation to what is stated in paragraph 6 above, the Applicant need to do the needful out of time thus this very application.*

8. *The Applicant was prosecuting this matter, in person, with little or limited knowledge of intricate of laws of the land."*

As if the foregoing is not enough, the applicant stated at para 2.3 of his written submission:

> *"2.3* ***Your Lordship/Madam Justice of Appeal,*** *in the instant case the applicant duly filed a notice of appeal and intimately, indicated an intention to serve copies of the notice to the respondents. The language used is English and it is most likely that the understanding might be a problem. That argument might look naïve but all in all, the Respondents are aware of the appeal for an application for leave to appeal to the Court of Appeal was taken care."*

With utmost respect to the applicant, these reasons for the delay, in my well-considered view, do not fall within the realm of good cause to trigger the Court exercise its discretion to grant the extensions sought. With equal utmost respect, I agree with Mr. Banturaki, the learned counsel for the first respondent, that the applicant has not shown good cause to be granted the extensions sought. Mr. Banturaki is right in his submissions that litigants must follow procedural rules of the court to act timely and,

when they fail do so, they should not show unnecessary delay when seeking extension. As we observed in the **Dr. Ally Shabbay** case (supra), at 306; the case cited to me by Mr. Banturaki, those who come to court must not show unnecessary delay in doing so; they must show great diligence. For these reasons, I have found myself constrained to hold, as I hereby do, that the applicant has miserably failed to show good cause for the delay to prompt me exercise the discretion to grant the enlargements of time sought. He has, as well, not demonstrated diligence.

For the avoidance of doubt, the applicant has also not shown and proved any illegality in the judgment intended to be challenged that would warrant extension of time despite failure to bring to the fore good cause as explained above as was the case in **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] TLR 387, **Principal Secretary, Ministry of Defence; National Service v. Devram Valambhia** [1992] TLR 185 and **Transport Equipment Ltd v. D.P. Valambhia** [1993] TLR 91). I also wish to add that the complaint by the applicant in his written submissions to the effect that the rule encapsulated in the Latin maxim *quicquid plantur solo, solo cedit* was somehow compromised, even if proved, would not amount to an illegality.

The above discussion boils down to the conclusion that this application is without merit. The same stands dismissed with costs to the first respondent.

Order accordingly.

DATED at **MWANZA** this 3rd day of April, 2019.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

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

B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL