IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

CIVIL APPLICATION NO. 459/17 OF 2018

PASKALI NINA ..... APPLICANT

VERSUS

ANDREW KARARA ..... RESPONDENT

(Application for extension of time to file appeal out of time from the decision of the High Court of Tanzania at Arusha)

(Sambo, J)

Dated 23rd day of November, 2012
in
(Misc. Land Apepal No. 60 of 2010)

RULING

10th & 13TH December, 2019

KITUSI, J.A.:

This application for extension of time stems from land proceedings which are considerably very old, the background of which is as follows: The applicant was successful in Land Application No. 11 of 2008 before Endabash Ward Tribunal, but the respondent successfully appealed against it in Land appeal No. 9 of 2010 before the District Land and Housing Tribunal (DLHT) of Karatu District. The applicant's appeal at the High Court vide Miscellaneous Land Appeal No. 60 of 2010 was futile.

The applicant was dissatisfied by the decision of the High Court rendered by the High Court (Sambo, J.) on 23 November, 2012. He

immediately lodged a Notice of Appeal within the prescribed statutory time but he could not lodge his appeal within time. By Notice of Motion made under Rule 10 and 48 (1) and (2) of the Tanzania Court of Appeal Rules, 2009, (the Rules), the applicant prays for extension of time to appeal from that decision of the High Court.

The application is supported by an affidavit taken by Mr. Qamara Aloyce Peter, learned advocate, in which there are details of what allegedly caused the delay. Mr. Peter also turned up at the hearing to act for the appellant, having earlier filed written submissions as per Rule 106 (1) of the Rules.

The respondent was fending for himself, so he appeared in person. No affidavit in reply had earlier been filed by or for him, and no reasonable explanation was forthcoming for not filing that affidavit despite being served with the Notice of Motion on 2nd May 2018. Hearing however, proceeded.

Mr. Peter adopted the contents of the affidavit and those of the written submissions and addressed the court orally to elaborate. Briefly, the following is his account; After the judgment of the High Court dated 23rd November 2012, the applicant wrote a letter dated 29th November 2012 to request for typed copies of the judgment proceedings and decree.

After several reminders evidenced by four letters annexed to the affidavit, the applicant was informed by the Registrar by a letter dated 23rd November 2017, that the requested documents were ready for collection.

Even though he said, the documents that were supplied were not sufficiently prepared the applicant wrote a letter to request for a Certificate of delay from the Registrar. This was received by the applicant on 25th January 2018 dated 17th January 2018, but the same only excluded 63 days from 29th November 2012. The reason given by the Registrar was that the documents were ready for collection as early as 30th January 2013. Mr. Peter argued that this contention by the Deputy Registrar was contradictory of his own letter dated 23rd November 2017 that had informed the applicant that the documents were ready for collection as from that date. He further argued that the Deputy Registrar had never before written to the applicant to inform him that the requisite documents were ready for collection from 30th January, 2013.

The learned counsel raised the matter with the Deputy Registrar requesting for a correct certificate but the Deputy Registrar stuck to his gun that the Certificate was correct. The last communication from the Deputy Registrar was dated 29th March 2018 informing the applicant that the certificate was the correct one. Explaining further, the learned counsel

submitted that between 30th March 2018 and 2nd April 2018 his office was closed for Easter vacation so it was not until 3rd April, 2018 when he received instructions to apply for extension of time, which he filed on 13th April 2018.

It is argued that the applicant's delay in appealing within time has been caused by the Registrar's refusal to issue a correct certificate of delay. He prayed that on that ground this application be granted.

He did not stop there. Mr. Peter sought to move the Court on the ground of illegality. In the supporting affidavit, counsel listed ten instances of illegality from paragraph 6 to 15. However at the hearing, Mr. Peter agreed with the court's position that most of those instances are, actually, grounds of appeal not illegalities. So he argued two points of illegalities.

The first aspect of illegality is that the DLHT of Karatu entertained an appeal that was filed out of time, but when this matter was raised at the High Court, it was not decided upon. The second aspect is that the High Court raised a matter on its own motion and proceeded to determine it without hearing the parties.

To support his arguments, Mr. Peter cited a number of cases, a list of which he had earlier presented. These are; **TANESCO & 2 Others v.**

Salim Kabora, Civil Application No. 68 of 2015 (unreported); **N'homango v. Attorney General** [2014]3 EA 305, **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185; and **Etienes Hotel v. National Housing Corporation,** Civil Reference No. 32 of 2005 (unreported).

In his brief submission in response, the respondent disputed the contention that his appeal to the DLHT was filed out of time and further submitted that he obtained an extension of time. As for the reasons for the delay, the respondent submitted that there was inaction on the part of the applicant from 2014 when Massengi, J granted him leave to appeal. He stated that he made follow-ups with the registry of the High Court and when he was certain that no appeal had been filed he started processing execution of the decree. In essence he accused the applicant of sloppiness.

In a short rejoinder Mr. Peter submitted that the extension of time referred to by the respondent was granted without a formal application and without hearing the parties. As for the alleged inaction on the applicant's part, he responded by submitting that there is no time when the applicant was idle as he kept following up the matter.

As I set out to dispose of this matter, I remind myself that my powers under Rule 10 of the Rules are discretionary and the parameters within which to exercise that discretion have been set by caselaw. This is to say, although all what an applicant must do under the rule is to show good cause and good cause has not been defined, there are some generic indicators of whether good cause exists or it does not See; **Lyamuya construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

The applicant is blaming the delay on the office of the Deputy Registrar High Court of Tanzania at Arusha, for not supplying him with the requisite documents and later for not supplying him with a correct certificate of delay. Let me verify the authenticity of this account by scrutinizing the paper trail of communication between the applicant's counsel and the said office of the Deputy Registrar.

The first letter written to request for the documents is dated 29th November 2012, that is six days from the date of the judgment. The second letter is dated 5th November 2014 and I note from that letter that in between the fist letter and the second, the applicant was pursuing the Application No. 133 of 2012 for leave to appeal and that it was granted

on 7th March 2014. The third letter is dated 30th November, 2015. The fourth letter is dated 10th April 2017 while the fifth letter or the fourth reminder is dated 27th October 2017.

On 13th December 2017, the counsel for the applicant rose the Deputy Registrar by yet another letter, this time requesting for a Certificate of Delay. I shall reproduce part of the contents of this letter;

> *" 5. On 30th November 2017 following your notice to us vide your letter dated 23rd November, 2017 with reference No. Misc. Land Appeal No. 60/2010, you supplied us all records necessary in processing our intended appeal to the Court of Appeal against the High Court decision in Misc. Land Appeal No. 60 of 2010.*
>
> *6. In terms of the proviso to rule 90 (1) of the Court of Appeal Rules, 2009, you are required to exclude the time spent for preparation and delivery of the required copies to the appellant.*
>
> *7. In view of the above you are requested to certify that the period from 23rd November, 2012 when judgment was delivered to the date of the requested*

certificate of delay as the period required for preparation and delivery of the required copies to the appellant."

The foregoing are statements made under oath, and since there is no affidavit in reply to challenge them, I take those averments as established. In a nutshell therefore the copies of the requisite documents were supplied on 30th November, 2017.

Rule 90 (1) of the Rules places on the Registrar the duty to supply to a litigant copies of the requisite documents for purposes of appeal, once he makes a written application. Other than writing a letter for that purpose, a litigant has no duty to remind the Registrar or make follow ups, as the rules stood before amendments introduced by GN No. 344 of 2019.

In this case by writing four letters of reminder, the applicant went far beyond what was expected of him. It cannot be said therefore, that the applicant was idle as submitted by the respondent. It is my finding that the applicant has accounted for the delay which has been dubbed as technical delay. See the case of **Ally Ramadhani Kihiyo v. The Commissioner for Customs Tanzania Revenue Authority & Another**, Civil Application No. 29/01 of 2018 (unreported).

Turning to the issue of illegality, the applicant need not prove it at this juncture. However, at a glance, there seems to be issues of jurisdiction and denial of a right to be heard which entitle the applicant to a hearing on appeal. On the authority of the case of **Principal Secretary Ministry of Defence and National Service v. Devram Valambhia** (supra), this ground alone would form a basis for granting the extension of time sought.

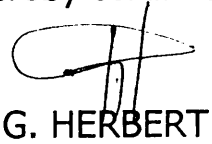
Thus, for the reason that the applicant was caught in a technical delay caused by the High Court Registry, and on the basis of an alleged illegality, this application is granted. Time within which to appeal is extended to the applicant and he should do so within 60 days of the delivery of this ruling.

Costs to be in the cause.

DATED at **ARUSHA** this 12th day of December, 2019.

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 13th day of December, 2019 in the presence of Mr. Qamara Aloyce Peter, learned Counsel for the Applicant and in the absent of the Respondent is hereby certified as a true copy of the original.



G. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL