

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 407/17 OF 2019

**HAMISI MOHAMED (as the Administrator
of the Estates of the late RISASI NGAWÉ) APPLICANT**

VERSUS

**MTUMWA MOSHI (as the Administratrix
of the Estates of the late MOSHI ABDALLAH) RESPONDENT**

**(Application for extension of time to file an appeal against the
Judgment and Decree of the High Court of Tanzania
(Land Division) at Dar es Salaam)**

(Mgetta, J)

Dated the 24th day of November, 2016

Land Case No. 301 of 2009

RULING

10th & 21st February, 2020

SEHEL, J.A

This is an application for extension of time within which to lodge an appeal against the decision of the High Court of Tanzania (Land Division) at Dar es Salaam delivered on 24th November 2016. The application is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (hereinafter referred to as the Rules). It is supported by an affidavit, duly sworn by the applicant.

In compliance with Rule 106 (1) of the Rules, the applicant through the legal aid services of Evans R. Nzowa, learned advocate from G & C Law Chambers filed written submissions.

The respondent, on the other hand, did not file affidavit in reply and
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advocate placed his signature and rubber stamp on 24th day of January 2020 signifying receipt of the same.

Given that situation, Mr. Nzowa, learned advocate who appeared for the applicant on legal aid services, sought leave of the Court to proceed with the hearing in absence of the respondent and the same was granted.

Basically, Mr. Nzowa adopted the notice of motion, affidavit and the written submissions filed in support of the application. He had nothing to add.

In his affidavit, the applicant mainly deposed two reasons for his delay. The first reason, he termed it as a technical delay whereby at Paragraphs 4, 5, 6, 7, 8, and 9 of the affidavit, he deposed that; soon after being

dissatisfied with the decision of the High Court, which was delivered on 24th November 2016, he promptly lodged a notice of appeal and applied for leave to appeal to the Court of Appeal. The application for leave was struck out for being incompetent. The applicant had then to file another application which was filed on 21st August, 2019 seeking for extension of time and for leave to appeal. That second application was partly allowed by granting extension of time within which to apply for leave to appeal to the Court of Appeal. Having obtained extension of time, the applicant lodged the application for leave to appeal. However, it was struck out for being overtaken by operation of the law as the requirement for leave to appeal on land matters emanating from the High Court exercising its original jurisdiction was abolished with the enactment of the Written Laws (Miscellaneous Amendments) Act No. 8 of 2018 published on 25th September 2018. It was thus submitted in the written submissions that the time taken to pursue his application for leave to appeal was a technical delay as such it constitutes good cause.

The second reason advanced was illegality. The applicant deposed at Paragraph 10 of the affidavit that the proceedings are tainted with illegality and that the finding of the High Court are not in tandem with the evidence

adduced before it by an officer from Ilala Municipal Council. On account of such illegality, the applicant prayed for the application for extension of time to be granted. He fortified his prayer with the authorities of **Converge Wireless Networks (Mauritius) Limited and Others v. WIA Group Limited and Others**, Civil Application No. 263 'B' of 2015 and **Amour Habib Salim v. Hussein Bafari**, Civil Application No. 52 of 2009 (both unreported) where it was held that an allegation of illegality is among the factors that constitutes a good cause.

The issue for my determination, in the light of the applicant's notice of motion, affidavit in support of the application and written submissions, is whether the applicant has advanced good cause to convince the Court to extend time within which he can lodge an appeal to the Court. The law, under Rule 10 of the Rules, requires a party who seeks an extension of time to advance good cause for the Court to exercise its discretionary power in extending time or otherwise. 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.”

What amounts to good cause has not been defined. However, from decided cases, certain factors may be taken into account in considering whether or not the applicant has shown good cause. Amongst the factors to be taken into account as succinctly stated in the in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) are:

- (a) The applicant must account for all the period for delay;
- (b) The delay should not be inordinate;
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and

- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

(See also **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (unreported); **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] TLR 387; and **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported)).

In the instant application, starting with an argument that there was a technical day, the applicant deposed that he had been diligent in pursuing his appeal only that he was prevented with technical delays that took him almost three years to file the present application. He explained that after lodging the notice of appeal, he timely filed his application for leave which was struck out on 3rd day of August 2017. The applicant had to start afresh with the process of seeking extension of time to lodge leave and for leave to appeal. He lodged the application at the High Court seeking for both prayers, extension of time and leave to appeal. On 7th day of December

2018, a prayer for an extension of time to apply for leave was granted but the second prayer for leave to appeal was not considered by the High Court because it was noted that prayer was not supported by the affidavit and the submissions made by the counsel for the applicant. The applicant was ordered to file the application for leave within twenty days from the date of that ruling which he timely filed. However, that application was struck out for being overtaken by events because the law that required an aggrieved party to obtain leave to appeal on land matters originating from the High Court was abolished by the Written Laws (Miscellaneous Amendments) Act No. 8 of 2018 published on 25th September 2018.

From the sequencing events, it is garnered that the applicant timely lodged his notice of appeal and applied for leave to appeal but that application was struck out because it was incompetent. Thus, the applicant had to start afresh the process of seeking leave which process was then halted by the operation of the law. As such, the time taken by the applicant in seeking leave, that is, counting from the time the applicant's initial application for leave was struck out to the time when the application for leave was found to be overtaken by operation of the law is in fact, a

technical delay which is explicable and excusable (See the cases of **Fortunatas Masha v. William Shija and Another** [1997] TLR 154 and **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (unreported)). After, the latter application was struck out the applicant took hardly a month to file the present application seeking for extension of time to file an appeal. In other words, the applicant was diligent all along in pursuing his rights to appeal. At no point in time he was negligent or sloppy in the process of seeking leave to appeal to the Court.

The applicant in this application is also alleging illegality that the decision of the High Court is not supported with the evidence adduced by an officer from Ilala Municipal Council.

It is settled law that where an issue of illegality is raised as a reason for applying for extension of time, such reason amounts to good cause. This position was stated in the case of **The Principal Secretary, Ministry of Defence and National Service Vs Devram Valambhia** (1992) T.L.R 182 that:

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right."

Further in **VIP Engineering and Marketing Limited and Three Others Vs Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CA (Unreported) the Court of Appeal patently stated:

"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."

It follows then that an allegation of illegality by itself suffices for an extension of time. However, such an allegation of illegality *"must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process."* (See the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra). Therefore, without going into merits of the alleged

illegality, I am satisfied that the alleged illegality suffice for the grant of an extension of time.

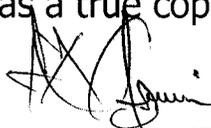
For the foregoing reasons, I find the applicant was diligent in pursuing his appeal and he is entitled for an extension of time. Accordingly, I grant the application. It is hereby ordered that the applicant shall lodge his appeal to the Court within sixty (60) days from the date of the delivery of this ruling. This is a legal aid case, thus I do not make an order for costs.

It is so ordered.

DATED at DAR ES SALAAM this 20th day of February, 2020.

B. M. A. Sehel
JUSTICE OF APPEAL

The Ruling delivered this 21st day of February, 2020 in the presence of Mr. Amiri Mohamed, learned Counsel for the Applicant and Mr. Mohamed Shabani holding brief of Mr. Yahaya Njama, learned Counsel for the Respondent, is hereby certified as a true copy of the original.



A. H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL