

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

CIVIL APPLICATION NO. 13/17/2018

ADDIJA RAMADHANI (BINTI PAZI)APPLICANT

VERSUS

SYLVESTER W. MKAMA.....RESPONDENT

**(Application from the Ruling of the High Court of Tanzania,
(Dar es Salaam District Registry) at Dar es Salaam)**

(Shangwa, J.)

Dated the 12th day of June, 2014

in

Land Case Appeal No. 15 of 2012

.....

RULING

20th November, & 7th December, 2020

KITUSI, J.A.:

This application was argued by Mr. Stevens Madulu, learned counsel, on behalf of the applicant. He sought to establish under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) that there is good cause to extend time so that the applicant may apply for a revision, outside the statutory time. There is an affidavit and a supplementary affidavit of Mr. Madulu to support the application.

On the other hand, Mr. Mafuru Mafuru, also learned counsel, contested the application through an affidavit in reply taken by himself, and by putting up arguments when the matter was called on for hearing.

Before addressing the key issue as to whether there is good cause for the delay, a brief background of the matter must be told so as to understand the context within which the application arises.

Back in 2009, the applicant instituted Land Application No. 5 of 2009 before the District Land and Housing Tribunal of Kibaha, but she lost. Then she lodged with the High Court, Land Case Appeal No. 15 of 2012 to challenge the decree of the Tribunal but she lost again. From the supporting affidavits and the dialogue I had with Mr. Maduhu, the matter at the High Court was not determine on its merits. Rather, the High Court Judge struck it out on the ground that its filing contravened section 38 of the Courts (Land Disputes Settlement) Act, Cap 216 (R.E. 2002), (the Act). That provision requires appeals to the High Court on matters originating from the Ward Tribunals to be filed at the District Land and Housing Tribunal. The applicant attempted a review vide Land Application No. 38 of 2014 but it was also struck out.

The main theme of the application is that there is an illegality in the decision of the High Court because the matter originated from the District Land and Housing Tribunal so the filing of the appeal did not violate any law. However, there is no copy of that decision, although the supplementary affidavit purports to annex it.

Then there is another ground that there are reasons for the delay. This application was filed on 30/7/2019, five years from 12th June, 2014 when Land Application No. 38 of 2014 was struck out. In a bid to account for the delay Mr. Madulu's sworn statement and oral argument is that it took time to trace the applicant, an old and ailing rural woman.

On the other hand, both in the affidavit in reply and in his oral address Mr. Mafuru stated that there is no material tending to account for each day of the delay, and the alleged illness of the applicant has not been established by evidence. It is also averred that the delay is inordinate. Mr. Mafuru supported his argument by the decision in the case of **Moto Matiko Mabunga v. Ophir Energy PLC and 2 Others** Civil Application No. 463/01 of 2017 (unreported).

As regards the alleged illegality, the learned counsel for the respondent submitted that there is no copy of judgment, but the copy of

the drawn order shows that the appeal was struck out for not complying with mandatory provisions of the law. He submitted that there is no mention of section 38 of the Act.

In a short rejoinder, Mr. Madulu submitted that the High Court (Shangwa, J.) rendered an oral judgment which has never been accessed by him.

My deliberations will be short because the position on this matter is settled. **Tanzania Revenue Authority and Tango Transport Co. Ltd and Tanzania Revenue Authority**, Consolidated Civil Applications No. 4 of 2009 and 9 of 2008 (unreported) is the basis for stating that extension of time will be granted upon resolving the following factors; (a) the length of the delay (b) the reason for the delay (c) whether there is an arguable case such as, whether there is a point of law on the illegality or otherwise of the decision sought to be challenged (d) the degree of prejudice to the defendant if the application is granted.

There is also a requirement for the applicant to account for every single day of the delay as submitted by Mr. Mafuru. See also the case of **Bushiri Hassan v. Latifa Lukio Mashayo** Civil Application No. 3 of 2007 (unreported).

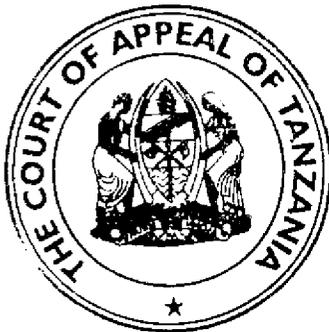
In the instant case I respectfully agree with Mr. Mafuru that the delay is inordinate and the applicant has not gone anywhere close to accounting for each day of the delay. The alleged illegality is hard to see at a glance because the applicant has never even seen the decision he intends to challenge. This goes to tell the lack of diligence on the part of the applicant and, with respect, the counsel representing her. Finally given the delay of over five years, the respondent will certainly be prejudiced by the order sought.

Therefore the application has no merit. It is dismissed with costs.

DATED at DAR ES SALAAM this 3rd day of December, 2020.

I. P. KITUSI
JUSTICE OF APPEAL

The ruling delivered this 7th day of December, 2020 in the presence of Ms. Rancy Mhaya, learned counsel holding brief for both Mr. Stevens Kosimadolu, for the applicant and Mr. Mafuru Mafuru, for the respondent is hereby certified as a true copy of the original.



DL
D.R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL