

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

CIVIL APPLICATION NO. 383/01 OF 2020

SELEMANI KASEMBE TAMBALA APPLICANT

VERSUS

**1. THE COMMISSIONER GENERAL OF PRISONS
2. PERMANENT SECRETARY, MINISTRY
OF HOME AFFAIRS
3. HON. ATTORNEY GENERAL** } **RESPONDENTS**

**(Application for Extension of Time to lodge Appeal out of time
against the Decision of the High Court
of Tanzania at Dar es Salaam)**

(Feleshi, JK.)

dated the 16th day of April, 2020

in

Misc. Civil Application No. 12 of 2020

RULING

23rd February & 12th March, 2021

LEVIRA, J.A.:

The applicant, SELEMANI KASEMBE TAMBALA has lodged a notice of motion supported by his affidavit seeking extension of time within which to lodge an appeal to the Court against the decision of the High Court of Tanzania (Feleshi, JK), in Misc. Civil Application No. 12 of 2020. To support his application, the applicant also lodged written submissions. The respondent

filed an affidavit in reply and written submissions in opposition to the application.

Briefly, the background of this application is to the effect that, the applicant was employed by the Ministry of Home Affairs in the year 1983 as a Prison Officer III. In 1998 he was promoted to a rank of Corporal and in 2005 to a rank of Sergeant. However, in 2009 he was terminated from employment. Dissatisfied with the termination, he appealed to the first respondent herein but the answer did not come out easily. He reported and sought help from the Commissioner for Human Rights and Good Governance. The response from the first respondent came out after lapse of eleven months. Later, the applicant re-appealed to the first respondent.

However, according to the record, in 2015 the first respondent advised the applicant to resort to legal remedy in courts of law with the help of Legal and Human Rights Centre. Thereafter, the applicant filed his application to the High Court seeking prerogative order of certiorari and mandamus against the decision of the first respondent, whom the applicant complained to have terminated his employment without according him the right to be heard. The applicant filed about nine applications in the High Court in the process of pursuing his right unsuccessfully.

The last application filed by the applicant before the High Court subject of the intended appeal is Miscellaneous Civil Application No. 12 of 2020. In that application, the applicant sought leave to file an application for certiorari to quash and set aside the decision of the first respondent. The High Court (Feleshi, JK) having found that the application before him was for similar orders sought in Miscellaneous Civil Application No. 18/2016 and Miscellaneous Civil Cause No. 26/2019 which were previously filed by the applicant in the High Court, and having considered the fact that the application before him was incompetent, struck it out. In addition, he restrained the applicant from filing any related application in the High Court in order to avert the applicant's endless applications which, he said, constituted a clear abuse of court process. The applicant was aggrieved with the decision of the High Court. Therefore, he wished to appeal against it but found time to appeal not in his favour, hence the current application.

At the hearing of the application the applicant appeared in person, unrepresented, whereas the respondent was represented by Ms. Grace Lupondo, learned State Attorney.

Upon being invited to address the Court in support of his application, the applicant had no much to say. He adopted his notice of motion, supporting

affidavit and written submissions as part of his oral submission. Thereafter, he only stated that his right to justice was denied by Feleshi, JK and thus prayed for the application to be granted.

In reply, Ms. Lupondo similarly adopted the respondent's affidavit in reply and written submissions as part of her oral submission and also urged the Court to consider the list of authorities submitted by the respondents. Thereafter, she submitted at the outset that the respondents oppose this application. According to her, this application is unmerited and deserves to be dismissed. The reason behind her stance was that the applicant has failed to account for the delay to institute the intended appeal.

She elaborated that the applicant intends to challenge the decision of the High Court of 16th April, 2020. Therefore, in terms of Rule 83 (2) of the Rules he was supposed to lodge the notice of appeal on or before 15th May, 2020 but he lodged the same on 18th May, 2020 without any explanation of the delay of 3 days. It was her argument that, even if we have to take that the notice was filed on time still the applicant has not advanced any valid reason as to why he did not institute appeal up to this moment. She argued further that, Rule 90(1) of the Rules requires that appeal to be instituted within 60 days of lodging the notice of appeal but the applicant has failed to account for the

delay from when he lodged the notice up to 14th September, 2020 when this application was lodged. She cited the case of **Finca (T) Limited and Another v. Boniface Mwalukisa**, Civil Application No. 589 /12 of 2018 (unreported) where it was stated that, delay of even a single day needs to be explained out.

Regarding the applicant's claim that he was waiting to be supplied with documents for appeal, Ms. Lupondo submitted that this reason is not justified. According to her, the letter of the Registrar of the High Court of 8th July, 2020 annexed by the applicant in his affidavit indicates clearly that the applicant had already been supplied with necessary documents by the time he was writing to the Registrar. She argued that, it was not proper for the applicant to wait to be supplied with the same copies again. By so doing, she said, the applicant demonstrated high level of negligence even when he was informed by the Registrar that he had those documents, he decided to stay idle for another two months before lodging this application. Ms. Lupondo concluded that, the applicant has failed to state the reasons for the delay to file his intended appeal.

In respect of the ground of illegality raised by the applicant, Ms. Lupondo submitted that for the complained illegality to stand as a ground for extension of time, it has to be apparent on the face of record as it was stated in a

number of decisions; including, in **Hamisi Mohamed (as the Administrator of the Estate of Risasi Ngawe, deceased) v. Mtumwa Moshi (as the Administrator of the Estate of Moshi Abdallah, deceased)**, Civil Application No. 526/17 of 2016; **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women’s Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Ngao Godwin v. Julius Mwarabu**, Civil Application No. 10 of 2015 (all unreported).

According to her, the illegality complained of by the applicant in the current application is not illegality in the real sense. This is due to the fact that, the applicant was barred to file any “related” application to the one which was before the High Court. It was her argument that, the applicant was given the right to be heard and he was allowed to file judicial review as indicated in his affidavit but he failed to do so on time. He filed twice applications for extension of time but he failed to advance sufficient reasons for delay. As a result, his applications were struck out.

Ms. Lupondo contended that the applicant filed three applications for extension of time, that is when the High Court barred him from filing related applications. As such, she said, from that background the alleged illegality is not apparent in the impugned decision because it invites a long drawn

argument to reach the conclusion that there is an illegality, if any. Basing on that argument, she concluded that the applicant has as well failed to show that there is an illegality in the impugned decision.

In his rejoinder, the applicant confirmed it to be true that he filed application for extension of time three times. However, he prayed for this application to be granted so that he can file the intended appeal.

I have dispassionately considered and weighed the submissions from both parties as presented before me for determination of the application at hand. The current application is preferred under Rule 10 of the Rules which requires good cause to be shown for the Court to exercise its discretionary powers to extend time. Having carefully gone through the notice of motion, supporting affidavit and the applicants written submission, I observed that, although the applicant presented supporting affidavit, annexures and written submissions containing a lot of information, his application boils down only to two key points. The first being that, he is applying for extension of time to lodge an appeal to the Court because the impugned decision is tainted with illegalities. Second, that failure to lodge his appeal within time was due to the fact that the Registrar of the High Court refused to supply him with necessary documents for appeal purposes.

In the first ground on illegality, the applicant claims under paragraph 12 of his affidavit that the order of the High Court denied him right to be heard because it barred and restrained him from filing any related application in the High Court of Tanzania. In the said application, the applicant applied for leave to file an application for certiorari to quash and set aside the decision of the first respondent.

However, as indicated above, the point of illegality raised by the applicant was vehemently opposed by Ms. Lupondo for not being apparent on the face of record and it is not of sufficient importance to justify extension of time. Besides, she said, the applicant was already heard by the High Court and allowed to file judicial review but he failed to do so within given time. I agree with Ms. Lupondo that the complained illegality is not apparent on the face of record. Besides, the applicant was accorded the right to be heard all the time and what made him not to fulfill his intention is acknowledged by himself under paragraph 12 of his affidavit where he states:

*"That I have faced, in the process of pursuing my rights above mentioned in the High Court of Tanzania, main Registry at Dar es Salaam difficult times and to date **I have not been accorded the chance because most; if not all, of the applications filed had problems one of***

which was being permanently barred from going back to the Court by the High Court of Tanzania, Main Registry at Dar es Salaam in Miscellaneous Civil Application No. 12 of 2020. Annexed hereto marked "J" is the copy of the Ruling, Proceedings and drawn order in the matter mentioned herein forming part thereof.
[Emphasis added].

From the above paragraph it is very clear that the order of the High Court was not illegal. The applicant acknowledges problems of the applications which he filed in the High Court. It is settled position that ignorance of the applicant or his advocate does not constitute good cause warranting extension of time. I may add here that decision of the court does not become illegal simply because a party is not satisfied with it. Apart from narrating a sequence of events in his affidavit, nothing apparent on record indicating that there was an illegality. Having so stated, I find that the first ground raised by the applicant is meritless, I accordingly dismiss it.

Coming to the second ground on the reason (s) for delay. It was the applicant's contention that delay to file the intended appeal was due to the refusal by the High Court Registrar to supply him with necessary documents for appeal purposes and to issue him a certificate of delay. On her part, Ms.

Lupondo argued that the applicant's delay was not caused by the Registrar as alleged. She referred the Court to paragraph 16 of the applicant's affidavit where the applicant stated that he had already been supplied with the necessary documents, (proceedings and order of the High Court) in time. Therefore, there was no way he could be supplied with the same documents again. According to her, the applicant has failed to give reasons for the delay to file the intended appeal.

Rule 90(1) of the Rules provides that an appeal shall be instituted by lodging in the appropriate Registry, within sixty days of the date when the notice of appeal was lodged with a memorandum of appeal, record of appeal and security for costs. It also excludes days to be computed by the Registrar if the applicant made an application in the High Court within thirty days of the date of decision to be supplied with copy of proceedings for appeal purposes.

In the current application, the impugned decision was delivered on 16th April, 2020 and the notice of appeal was filed on 18th May, 2020. In passing, I take note that in terms of Rules 83(2) of the Rules, a notice of appeal is supposed to be filed within 30 days of the date of the impugned decision, as correctly in my view, argued by Ms. Lupondo.

As earlier on indicated, the applicant was required to file the intended appeal within 60 days of filing the notice of appeal, however, he has not been able to do so to date. The applicant is blaming the Registrar of the High Court that he refused to supply him with the necessary document in time upon request. Under paragraph 16 of the supporting affidavit, the applicant acknowledges that he was supplied with the proceedings and the order of the High Court which he later came to request the Registrar to supply him for another time. I find it important at this juncture to reproduce paragraphs 16, 17, 18 and 19 of the supporting affidavit:-

"16. That at the time I collected the proceedings and the order of the court I had no idea of appealing but collected the documents as of right but upon having made consultations with legal experts is when I decided to file the notice of appeal and applied for records because there was still time.

17. That subsequent to filling the notice of appeal and applied for record is when I requested in writing for the records and certificate of delay and it was then that I was answered by the Registrar is when I realised that my time to appeal started running retrospectively which thinking I believe was not correct. Annexed

marked "L" is the letter seeking for certificate of delay forming part hereof.

*18. That I was informed by advocate Godfrey Ukongwa whom I consulted that my time for appeal started running from the date I filed notice of appeal and not otherwise and that **the Court was duty bound to supply me the record for appeal purposes and that I collected and to – date I have not been supplied as per my request and request made by the named advocate above.** Annexed marked "M" is the advocate's letter forming part thereof.*

*19. **That I have delayed to file my appeal due to the fact that the Registrar is no longer ready to supply me the record as per my application for the record that cannot work retrospectively or issue a certificate of delay to cover the lost days a situation I consider has elements of illegality due none compliance by the Registrar.*** [Emphasis added].

Looking at the above paragraphs, the applicant's complaint is that when he decided to appeal, he wrote a letter to the Registrar requesting for the necessary document which he was informed that he had collected on 21st April, 2020 as per annexures "1 & 2" to paragraph 15 of the supporting affidavit. This means that, the applicant was served on the 5th day of the impugned

decision of the High Court. The proviso to Rule 90(1) of the Rules provides that:

".... save that where an application for a copy of proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall be, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant."

I wish to observe that, the above proviso requires the Registrar to exclude days which he used in preparation and delivery of the copy of proceedings to the applicant upon request within 30 days of the decision. Therefore, the same is not applicable in the circumstances of the current matter where the applicant was supplied with the relevant documents even before the lapse of prescribed time. It has to be understood that, the above provision is applicable in a situation where the Registrar for one reason or another fails to supply the applicant who applied timely with the necessary documents and not otherwise. In essence the provision is designed to protect rights of an applicant who acted diligently and promptly to pursue his rights but prevented by circumstances beyond his control. I find the ground raised

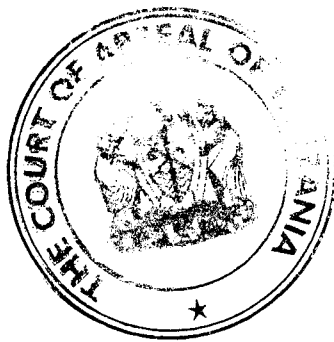
by the applicant to be invalid as the Registrar is not compelled to resupply a copy of proceedings already supplied to a party. Whether the applicant was supplied before requesting for those documents or requested as of right before deciding to appeal as claimed herein, does not make any difference if he will be supplied upon request after making such decision to appeal. Since the applicant was supplied with necessary documents for appeal purposes in time, he cannot advance failure or delay to be resupplied as a good cause for enlargement of time. I agree with Ms. Lupondo that the record of this application is very clear that, the current application was filed on 14th September, 2020, two months ahead the prescribed time. In the circumstances, I find that the applicant has failed to give sufficient reasons for the delay. It is settled law that a party applying for extension of time has to account for every day of delay. (See **Yazid Kassim Mbakileki v. CRDB (1996) TLD Bukoba Branch & Another**, Civil Application No. 412/04 of 2018; **Finca (T) Limited and Another** (supra) and **Joseph Paul Kyanka Njau & Another v. Emmanuel Paul Kyanka Njau & Another**, Civil Application No. 7/05 of 2016 (All unreported)) to mention but a few.

For the reasons stated above, the application at hand is without merits. The applicant has failed to advance good cause to justify extension of time as sought. Consequently, the application is dismissed with no order as to costs.

DATED at DAR ES SALAAM this 3rd day of March, 2021

M. C. LEVIRA
JUSTICE OF APPEAL

The ruling delivered this 12th day of March, 2021 in the presence of the applicant in person, and Ms. Jesca Sheikh, Principal State Attorney for the Respondents, is hereby certified as a true copy of the original.



S. J. Kainda
S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL