

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

CIVIL APPLICATION NO. 1/1 OF 2020

**SWALEHE MBARAKA SAID (Administrator of the
Estate of the late MAHMOUD SAID ABDULRAHMAN)APPLICANT**

VERSUS

AHMAD MOHAMED MTUNDU.....RESPONDENT

**(Application for extension of time to apply for Review of the decision of the
Court of Appeal Court of Tanzania, at Dar es Salaam)**

(Kileo, Bwana and Mjasiri, JJA.)

dated 25th day of April, 2014

in

Consolidated Civil Appeals No. 75 and 79 of 2011

.....

RULING

5th April & 13th May, 2022

MAKUNGU, JA.:

The applicant is seeking extension of time within which to lodge an application for review of the decision of this Court (Kileo, Bwana and Mjasiri, JJA.) dated 25th August, 2014 in consolidated Civil Appeals No. 75 and 79 of 2011. It is, perhaps, noteworthy that this is not the first time the applicant makes a quest towards the review of the referred consolidated Civil Appeals No. 75 and 79 of 2011. In an earlier Civil Application No. 165 of 2014, the applicant sought a review of the decision but, as it turned out,

on the 7th June, 2019 his application was struck out for failure to serve the 2nd respondent with copies of notice of motion (Mwarija, Mwangesi and Kwariko, JJA.), hence the present quest.

The application is by way of a notice of motion which is predicated under the provisions of Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit of the applicant.

The grounds for an extension of time have been stated in the notice of motion thus: -

1. The decision is a nullity: -

- (i) The Appeal was commenced and presented by one Mohamed Mtundu who had already passed away on 27th November, 2002.*
- (ii) Even the decision of the High Court in Civil Case No. 296 of 1995 delivered on 4th November, 2011, which was the basis of consolidated Civil Appeals No. 75 and 79 of 2011 was a nullity because it was also prosecuted by Mohamed Mtundu who had passed away in November, 2002.*

- (iii) *The consolidated appeals, which were determined on 25th August, 2014, were prosecuted against, and defended by the respondent Mahmoud Said Abdulrahman, who has already passed away since 12th June, 2012.*
- (iv) *By the time Civil Case No. 265 of 1995 was determined, that is on 4th April, 2011 the Civil Registry of the High Court ceased to have jurisdiction to determine a land dispute in a Civil Case as such. The Court which determined Civil Case No. 265 of 1995, which was the basis of the consolidated Civil Appeals No. 75 and 79, had no jurisdiction.*

The application has been resisted by the 1st respondent through an affidavit in reply sworn by the 1st respondent. The 2nd respondent has just as well resisted the application through an affidavit in reply sworn by a learned Principal State Attorney Mr. Deodatus Nyoni.

It is noteworthy that through their respective learned counsel, all the parties, save for the 2nd respondent have enjoined written submissions either to support or to counter the application.

When the application was placed before me for hearing, the applicant was represented by Mr. Samson Mbamba, learned advocate. The 1st respondent was represented by Mr. Denis Maringo, learned advocate while the 2nd respondent had the services of Mr. Galus Lupogo, learned State Attorney.

On 25th March, 2022, Mr. Maringo filed a notice of preliminary objection against the application which contains four points of objection. However, after brief dialogue with the Court, he prayed to withdraw it and to allow the application to proceed with hearing on merit. The prayer was unopposed and therefore the said notice of preliminary objection was marked withdrawn.

In support of the application, Mr. Mbamba commenced his address by fully adopting the notice of motion as well as the affidavit in support thereof. He also brought to my attention the applicant's written submission as well as his lists of authorities desired to be relied upon which he

similarly adopted. Mr. Mbamba then informed the Court that he abandoned 1st ground that is 1 (i) in the notice of motion and will explain briefly the three remaining items (ii) (iii) (iv) which will be referred to as the 2nd, 3rd and 4th grounds.

On the 2nd ground Mr. Mbamba claims that the decision of the High Court in Civil Case No. 296 of 1995 delivered on 4th November, 2011, which was the basis of consolidated Civil Appeals No. 75 and 79 of 2011 was a nullity because it was prosecuted by Mohamed Mtundu who had passed away since 27th November, 2002. He referred this Court to the cases of **Said Ibrahim (Legal representative of Ibrahim Ramadhan) v. Melembuke Kitasho**, Civil Application No. 5 of 2014, **Tanzania National Parks (TANAPA) v. Joseph K. Magombi**, Civil Application No. 471/18 of 2016 and **William Buruma v. Gomelo Sasi**, Civil Application No. 166 of 2016 (all unreported).

On the 3rd ground, Mr. Mbamba contended that the appeals which were determined by this Court on 25/8/2014 were prosecuted against and defended by the respondent Mahmoud Said Abdulrahman who had already passed away since 12/6/2012.

On the last ground, Mr. Mbamba submitted that when the Civil Case No. 265 of 1995 was determined on 4/4/2011, the Civil Registry of the High Court ceased to have jurisdiction to determine the said land dispute. As such the Court which determined the Civil Case No. 265 of 1995 which was the basis of consolidation of Civil Appeals No. 75 and 79 of 2011 had no jurisdiction. With respect to the alleged illegalities, he conclusively submitted that the pointed illegalities are alone sufficient cause for granting the prayers sought in the notice of motion.

The application was, as I said earlier, strongly resisted by the respondents. Mr. Maringo who took the floor on behalf of the 1st respondent, commenced his submission by fully adopting his affidavit in reply, his client's written submission as well as the lists of authorities desired to be relied upon. He submitted that in this application the scope of this Court is simply confined to see whether the applicant has shown sufficient cause necessary to justify the granting of extension of time. He argued that the applicant failed to give account to those days commencing from 7th June, 2019 when the first application was struck out by this Court to the time when this application was eventually filed on 2nd January, 2020.

On the alleged illegality, Mr. Maringo responded that the issue was not raised before the Court during the hearing of the appeals. He has the view that the challenge here is the decision of the High Court and not this Court. He argued further that the question of the jurisdiction of the High Court was supposed to be raised during the hearing of the appeals and not in this application for extension of time. To buttress his contentions, he referred to me the decisions of the Court in **Farida Mbaraka and another v. Domina Kagaruki**, Civil Application No. 68/17 of 2018, **John Lazaro v. Republic**, Criminal Application No. 163/17 of 2019 (all unreported).

Based on his submission, he prayed the application to be dismissed with costs.

On his part, Mr. Lupogo, learned State Attorney for the 2nd respondent also adopted 2nd respondent's affidavit in reply and list of authorities. He submitted that in the notice of motion, affidavit in support of the application and in the written submission there is nowhere the applicant explained the reasons for the delay to justify grant of this application.

On the alleged illegality in the impugned decision Mr. Lupogo submitted that since the applicant has abandoned his 1st ground then the remaining grounds do not support the application. He submitted further that the allegation of illegality must be in the face of the record but in this application, the alleged illegality is going deep to the decision of the High Court and not this Court. Hence, the decision of the Court is valid. To buttress his contentions, he referred me to the four unreported cases of **Joseph Chamba and another v. Ramson Mlay**, Civil Appeal No. 107 of 1998, **Sharifu Nuru Muswadiku v. Razak Yasau and Another**, Civil Appeal No. 48 of 2019, **Hamis Mohamed (as Administrator of the Estates of the late RISAS NGawe) v. Mtumwa Moshi (as the Administratrix of the Estate of the late MOSHI ABDALLAH)**, Civil Application No. 407/17 of 2019, (all unreported). He finally prayed for the dismissal of the application with costs.

In his brief rejoinder submission, Mr. Mbamba replied that illegality alone without accounting for each day of delay may constitute sufficient reason for the extension of time.

Having considered the submissions made by the counsel for the parties, I see no cogent reason given by the applicant to be termed as

good cause in terms of the requirement under Rule 10 of the Rules. 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), the following guidelines were formulated in considering what amounts to good cause: -

"(a) The applicant must account for all days of the delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the Prosecutions of the action that he intends to take.

(d) If the Court feels that there are other reasons,

such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged".

None of the guidelines stated herein above were justified by the grounds given by the applicant neither in his notice of motion nor in his affidavit and even the oral submission of his counsel.

It is now a trite law that the applicant has to account for each of the delayed days. See the case of **Mohamed Athuman v. Republic**, Criminal Application No. 13 of 2015 (unreported).

In the absence of cogent reasons as to why the applicant has failed to file his application for review within time prescribed by Rule 66 (3) of the Rules, there cannot be any other better language other than holding that there has been negligence or sloppiness on the part of the applicant which disentitles him from benefiting the discretion of the Court conferred upon it under Rule 10 of the Rules to be exercised in his favor.

As the record shows, the applicant waited for seven months from 7th June, 2019 when his first application was struck out to 2nd January, 2020 when he attempted to file this application.

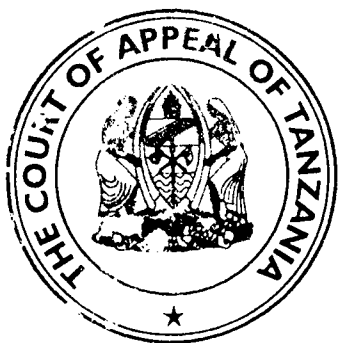
I am alive that considering an application for an extension of time for filing a review, a party seeking such extension has to indicate, either explicitly or implicitly, that the review would be predicated on one of the grounds mentioned under Rule 66 (1) of the Rules. Since in this application the applicant has failed to do so, my considered view that there are no good cause to warrant grant of this application. In the event and on account of failure by the applicant to show good cause, I am constrained

not to exercise my discretion conferred upon me under Rule 10 of the Rules to grant him extension of time to file review application. I therefore find the application is devoid of merit and I hereby dismissed it with costs.

DATED at DAR ES SALAAM this 10th day of May, 2022.

O. O. MAKUNGU
JUSTICE OF APPEAL

The ruling delivered on this 13th day May, 2022, in the presence of Ms. Blandina Kihampa, holding brief for Mr. Samson Mbamba for the applicant and Ms. Ganjatuni Kilemile holding brief for Mr. Denis Maringo for the 1st respondent and Mr. Elias Evelius Mwenda, learned State Attorney for the 2nd respondent, is hereby certified as a true copy of the original.




C. M. Magesa
DEPUTY REGISTRAR
COURT OF APPEAL