

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

CIVIL APPLICATION NO. 38/01 OF 2022

DAR ES SALAAM WATER AND SEWAGE AUTHORITY.....APPLICANT

VERSUS

- 1. DIDAS KAMEKA**
- 2. HAMISI NCHINYA**
- 3. HADIJA NDAI**
- 4. MERY MASAMBA**
- 5. SALVIUS KOMBA**
- 6. FIDELIS JACOB TARIMO**
- 7. EDSON KIBI**
- 8. ANDELIUSI JULU**
- 9. FILEX KITABI**
- 10. ANUSA MNDANI**
- 11. LUKAS KOSMAS**
- 12. FARIDA PIUS MAENGE as Administratix of
the estate of the SIKITU SELEMANI**
- 13. LOVE GINA JANA an administratix of
the estate of the late MWAMINI SAID JANA**
- 14. BRAYSON SWAI**
- 15. SYLVESTER MASIGE**
- 16. JOYCE MREMA**
- 17. ADELA MPOMO an administratix of
the late ANATORY DAUDI**
- 18. JOSEPHINA TAYARI**
- 19. GIFT RICHARD MUSHI suing under Power
of Attorney donated by ESTER A SHOO**
- 20. ABDALLAH SALUM BORY an administrator
of estate of the late SALUM BORY**

.....RESPONDENTS

**(Application for extension of time to lodge application for review against the
Judgment of the Court of Appeal of Tanzania at Dar es Salaam)**

(Mkuye, Kwariko, And Kihwelo, JJ.A.)

dated the 13th day of September, 2021

in

Civil Appeal No. 233 of 2013

.....

RULING

11th July & 3^d August, 2023

KAIRO, J.A.:

By notice of motion dated 27th January, 2022, the applicant seeks an extension of time to lodge review of the Judgment of the Court dated

17th December, 2021 in Civil Appeal No. 233 of 2019. The application is preferred under Rule 10, 4 (2) (b), (c) and 48 (1) of the Tanzania Court of Appeal Rules, 2009 (henceforth "*the Rules*") and it is supported by an affidavit of Mr. Hangi M. Chang'a, learned Principal State Attorney.

On the other hand, Ms. Glory Venance, learned counsel filed an affidavit in reply to oppose the application on behalf of the respondents. Both parties filed their respective written submissions for and against the application in terms of Rule 106 (1) and 7 of the Rules.

The brief material facts giving rise to this application are to the effect that, the respondents instituted Land Case No. 97 of 2017 at the High Court Land Division, at Dar es Salaam claiming among others that, the applicant be ordered to pay them a total sum of Tshs. 1,436,341,000.00 as compensation for the suit land and loss suffered as a result of the applicant's unlawful demolition of their properties. The claim was denied by the applicant.

After hearing the parties to the suit, the High Court entered Judgment in favour of the respondents by declaring them owners of the suit land located at Tegeta, Wazo Area within Kinondoni District, Dar es Salaam Region. The High Court further ordered the applicant to pay Tshs. 30,000,000/= to each respondent as compensation for their demolished properties and lost land.

The applicant was unhappy with the said decision and decided to appeal to the Court in Civil Appeal No. 233 of 2019, but was unsuccessful. The outcome further aggrieved the applicant and is currently contemplating to lodge an application for review against the Court's decision. However, since the prescribed statutory period within which to lodge review has lapsed, the applicant is now before me applying for an extension of time to lodge the same.

At the hearing of this application, Mr. Edwin Webiro, learned State Attorney represented the applicant while Mr. Cornelius Kariwa, learned counsel appeared for the respondents. He was also accompanied by the 16th respondent, one Ms. Joyce Mrema.

Submitting in support of the application, Mr. Webiro prayed to adopt the notice of motion and the supporting affidavit together with the written submission filed on 28th March, 2022.

The grounds upon which extension of time is sought as per the notice of motion are that;

- i) The decision is based on manifest error on the face of the record as the evidence on record as well as the analysis of the same by the Court indicates that the respondents were trespassers. However, at the end, the Court held that the respondents were not trespassers.*

ii) The Honourable Court erred when it held that it cannot interfere with the award of special damages which requires strict proof. However, the Court treated them as general damages for the reason that they were granted at the discretion of the Court.

He further stated that the guiding factors to move the Court to grant such type of application include involvement of point of law on the decision subject to challenge so that the same can be looked into by the Court.

He went on that, the grounds as pointed out in the notice of motion and paragraph 7 of the affidavit are sufficient to warrant the grant of the extension of time sought. According to Mr. Webiro, the same clarify the point(s) of law that are sought to be challenged in review and if granted the Court will have the opportunity to review its decision.

He went on to clarify that, the Court has on several occasions stated that points of law subject to challenge is a sufficient cause even where the applicant has failed to account for the delay. To substantiate his contention, he cited the case of **Attorney General vs Emmanuel Marangakisi (as Attorney of Anastancious Anagnostou) and 3 others**, Civil Application No. 138 of 2019 (unreported) at pages 17 and

19. Mr. Webiro went on to submit that the point of law to be challenged must be apparent on the face of the record and according to him, the pointed-out point of law is overt in the decision to be impugned and thus sufficient to move the Court to grant the application.

Mr. Webiro also submitted that pages 18 and 19 of the judgment at issue covers the first ground in the notice of motion while the second ground which revolve around the general damages awarded was discussed at page 27 of the Judgment. He prayed the Court to exercise its discretion and grant the applicant the prayers sought.

On his part, Mr. Kariwa opposed the application. He started by praying to adopt the respondents' affidavit in reply and the written submission filed on 10th May, 2022. He refuted the contention by Mr. Webiro that, paragraph 7 of the affidavit shows manifest errors on the impugned judgment. He clarified that, Mr. Webiro failed to indicate specially whether the alleged errors cover the law, fact or forum. According to him, the alleged issues of involvement of point of law is spoken from the bar and not from the stipulated grounds.

He went on to submit that, even if it is assumed to be the errors of law, but the applicant has not stated categorically where in the decision the Court has committed the alleged errors. It was his contention that, the attacked page 27 denotes the correct analysis of the legal position

regarding the award of damages contrary to what was contended by Mr. Webiro. He further submitted that even pages 18 and 19 do not show the alleged commission of errors by the Court. He concluded by praying to the Court to dismiss this application with costs so that the respondents can enjoy the fruits of their decree.

In his brief rejoinder, Mr. Webiro submitted that it is in paragraph 7 where the applicant clearly stated that the decision at issue is a nullity due to failure to declare the respondents trespassers and changing special damages to general damages, which he contended to be a point of law. He went on to submit that the question as to whether the raised point of law is correct or not is to be determined by the Court during review, as such Mr. Kariwa prematurely raised it at this stage. He urged the Court to desist from falling into such trap since that is a substantive issue to be taken before the Court for its determination during review. Mr. Webiro reiterated his prayer to have this application granted.

It is a settled law that, good cause has to be exhibited by the applicant before the Court can exercise its power under Rule 10 of the Rules. As a matter of general principle, it is the discretion of the Court to grant an extension of time. However, the discretion is judicial and thus it must be exercised according to the rules of reason and justice.

As correctly submitted by Mr. Webiro, various factors are taken into account when determining what constitutes good cause, and among them is the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged (See: **Lyamuya Construction Company Ltd vs Board of Trustee of Young Women's Christina Association of Tanzania**, Civil Application No. 2 of 2010, **VIP Engineering and Marketing Limited & Two others vs Citibank Tanzania Limited**, Consolidated Civil Reference No. 6,7 and 8 of 2006; **Finca (T) Limited and Another vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (all unreported).

In the present application, Mr. Webiro contended that there are points of law in existence in the decision subject to be challenged that has rendered it a nullity. As such, there is a need for the Court to look into during review. It was his contention that the grounds in the notice of motion and paragraph 7 of the applicant's affidavit clarifies the points of law involved in the decision subject to challenge and therefore, sufficient cause to enable the Court exercise its discretion and grant the extension of time. For ease of reference and the discussion to follow, I will quote paragraph 7 of the applicant's affidavit only as the grounds as per the notice of motion has already been reproduced herein above:-

THAT, on receipt of the said letter from the Applicant I requested for a file of this matter and all other relevant documents. Upon reading the Judgment of the Court of Appeal of Tanzania (Mkuye, J.A, Kwariko, J.A and Kihwelo, J.A) sitting at Dar es Salaam in Civil Appeal No. 233 of 2013, I noticed that the same has manifest error on the face of the record resulting in miscarriage of justice and is a nullity on the following grounds:

- (i) *The decision is based on a manifest error on the face of the record as the evidence on record as well as the analysis of the same by the Court indicates that the Respondents were trespassers. However, in the final analysis the Court held that the Respondents are not trespassers.*
- (ii) *The Honourable Court erred itself when it held that it cannot interfere with the award of special damages which requires strict proof but were treated by the Court as general damages for the reason that they were granted at the discretion of the Court.*

Looking at the quoted paragraph, it is the contention of the applicant that the impugned decision is a nullity. According to Mr. Webiro, this is the point of law involved which qualifies the grant of the extension of time sought. In the said paragraph, the applicant is challenging various matters alleging that the Court erred in their analysis

by failing to declare the respondents trespassers. Further to that she alleges that the Court erred by failing to interfere with the finding of the lower court which awarded damages that are specific in nature without strict proof of the same and call them general damages.

I do not dispute the contention by Mr. Webiro that an existence of point of law in a decision sought to be challenged is one of the grounds under which the Court may exercise its discretion and extend time. Nevertheless, the law is now settled that not all points of law constitute sufficient cause for the purpose of extending time. In **Fatma Hussein Shariff vs. Alkhan Abdallah and 3 others**, Civil Application No. 536/17 of 2017 (*unreported) three conditions have to be present in a judgment sought to be challenged, for a point of law to be considered as a good cause for extending time. These are **one**; it has to be of sufficient importance, **two**; it must be apparent on the face of record, and **three**; not one that would be discovered by a long-drawn arguments or process. The question for determination therefore is whether the pointed-out point of law in paragraph 7 met the threshold listed in **Fatuma Hussein Shariff** (supra).

I have gone through the decision subject to challenge and more thoroughly in the pointed pages. To say the least, they fall short of the threshold above stated. Though Mr. Webiro has contended that the

errors that constitute the points of law are apparent in the impugned decision, but with much respect, I do not subscribe to his contention. The alleged errors if any, despite not being apparent, would also, in my view, be established by a long process of reasoning on the same and which may possibly result into two distinct opinions.

Much as the applicant might not be happy with the said decision, but I to emphasize the clear legal stance that not every point of law will qualify the grant of the extension of time to the applicant as earlier stated. In this respect, I am guided by a famous case of **Lyamuya Construction Company Ltd** (supra) where the Court observed as follows:

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasised that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; **not one that***

would be discovered by a long-drawn argument or process." [Emphasis mine]

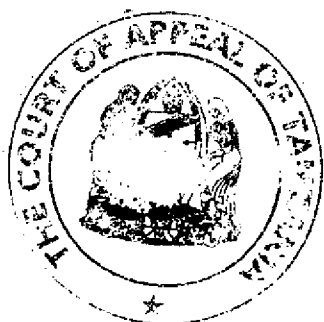
Applying the above decision in the facts at hand, I am not convinced that the alleged nullity is apparent on the face of the decision subject to challenge. Obviously, it will take a long-drawn process of reasoning to decipher or find out the alleged errors that according to her has rendered the impugned decision a nullity.


I am aware that in **Lyamuya's** case (supra) the Court discussed about extending time for an intended appeal, but the principle stands even in extending time for review, in my opinion. I am, therefore, constrained to conclude that the applicant has failed to exhibit good cause that would entitle her the extension of time sought. Consequently, the application is without merit and it is hereby dismissed with costs.

DATED at DAR ES SALAAM this 2nd day of August, 2023.

L. G. KAIRO
JUSTICE OF APPEAL

The Ruling delivered this 3rd day of August, 2023 in the presence of Ms. Caroline Lyimo, learned State Attorney for the Applicant and Mr. Michael Kariwa, learned counsel for the Respondents is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL