

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 565/17 OF 2022**

**SEIF ABDALLAH MAPUA (as an Administrator of the  
estate of the deceased ABDALLAH SEIF) ..... APPLICANT**

**VERSUS**

**REV. DR. WILLIAM MATHAYO MNTENGA ..... RESPONDENT**

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

**(Nchimbi, J.)**

**dated 20<sup>th</sup> day of April, 2016**

**in**

**Land Case No. 241 of 2013**

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**RULING**

9<sup>th</sup> & 21 November, 2023

**ISMAIL J.A.:**

This is an application for extension of time, instituted as a second bite. It follows the dismissal of an earlier application, filed in the High Court as Miscellaneous Civil Land Application No. 48 of 2021. As in the instant application, the prayer in the High Court was for extension of time to file a notice of appeal against the decision of the High Court, Land Division, in Land Case No. 241 of 2013. The said case involved a dispute on the transfer

of a house, and it pitted the respondent, then featuring as the plaintiff, against Omari Salum Chitanda, an administrator of the estate of the late Abdallah Seif.

The application has been preferred by Seif Abdallah Mapua who has succeeded Omari Salum Chitanda who has vacated office. It is supported by an affidavit affirmed by the applicant and it serves as the basis for the prayers sought in the notice of motion. The grounds on which the application is based are stated in paragraphs 4, 5 and 6 of the supporting affidavit. They suggest that there was negligence by the applicant's legal counsel in the handling of the proceedings that came after the High Court's judgment. Illegality on the decision of the High Court is also imputed by the applicant.

The factual setting that bred the instant application, as deduced from the trial record, is briefly as follows:

Abdallah Seif, the deceased, was the owner of a house standing on Plot No. 15 Block 1 Hananasif, Kinondoni within the City of Dar es Salaam. He is alleged to have entered into an agreement for disposition of the said house to the respondent, the purchaser. A total of TZS. 76,000,000/- was paid in several tranches, out of TZS. 80,000,000/- that constituted the purchase price. In exchange, the respondent was furnished with copies of

the ownership documents while originals were to be handed over to him on payment of the balance sum. The understanding was that the balance would be paid in end March, 2013. Sadly, however, the seller met his demise before the agreed date.

The respondent took the matter with Omari Salum Chitanda who was appointed to administer the deceased's estate. It was against him, that the proceedings for an order of specific performance were instituted in the High Court, Land Division. Specifically, the court was moved to order the applicant to receive the remainder of the purchase price and hand over the property's documents to the respondent. At the end of the trial proceedings, the High Court acceded to the respondent's demands and decided the case in the respondent's favour.

This loss triggered the applicant's journey to this Court. Noting that the intended action had been caught in the web of time bar, he applied for extension of time on the first asking. This was through institution of Miscellaneous Land Application No. 48 of 2021. This application was refused for want of sufficient cause for its grant. Not content with the decision, the applicant has preferred the instant application.

At the hearing of the application, the applicant appeared in person while the respondent enlisted the services of Mr. Alex Balomi, learned advocate.

In his brief address to the Court, the applicant implored the Court to review the notice of motion and the contents of his affidavit in support and consider them to be his submission and leave to the Court for a decision on whether to grant or refuse the application. He prayed that the application be granted with costs.

When Mr. Balomi's turn came, he acknowledged that the respondent filed no affidavit in reply to the applicant's averments. He, nevertheless, maintained that the respondent was opposed to the application but would only oppose it on the points of law.

His entry point was with respect to time prescription for filing the application, and on this, the argument is that the application was filed on 20<sup>th</sup> September, 2022 while the decision that refused him an extension of time was delivered on 30<sup>th</sup> June, 2021. This was far in excess of the 14-day period set out in rule 45A (1) (c) of the Rules, as action by the applicant was taken 14 months later.

Regarding the substance of the application, Mr. Balomi's contention is that rule 10 requires that good reason be adduced to justify the delay. He took the view that, whilst the affidavit has given reasons for the delay, there is no accounting of the days of delay. He poured cold water on the negligence exhibited by the applicant's advocates, arguing that it is not elaborate and that no particulars of such negligence have been given. Not even the names of the said advocates have been shared. Mr. Balomi argued that the delay was so inordinate to be excused. He prayed that the application be dismissed with costs.

In rejoinder, the applicant contended that the information about refusal of his application was given by a certain Mr. Geoffrey, his advocate, who was reluctant to share any order of the said refusal. The applicant further submitted that after the decision by Nchimbi, J., his lawyer did not take action as the family was embroiled in sever disagreements that derailed the entire process. He argued that negligence is that of his advocate who has been elusive. He urged the Court to resist the urge to attribute that to the applicant.

I will first address my mind to the preliminary point that questions the competence of the application. The argument by Mr. Balomi is that the

application is discrepant for being preferred outside the time frame prescribed by law. This argument was not assailed by the applicant.

As stated by the respondent's counsel, applications for extension of time on a second bite are governed by rule 45A (1) (a) of the Rules. For convenience, it is fitting that the substance of the said provision be reproduced. It provides:

*"Where an application for extension of time to:-*

- (a) Lodge a notice of appeal;*
- (b) N/A*
- (c) N/A,*

*is refused by the High Court, the applicant may **within fourteen days of such decision** apply to the Court for extension of time.* [Emphasis added]

From the foregoing excerpt the obvious and clear message is that an application filed after the lapse of the time prescription stated above is a procrastinated action and lacks the requisite competence (See: **Mwajuma Ahmada Mzee (Himidi Ramadhan Mkuya-Legal representative) v. Hadia Ahmada Mzee & 2 Others**, Civil Application No. 104/15 of 2019; **Wema Moyo v. Monday Mwafongo**, Civil Application No. 299/17 of 2021;

and **Njowoka M. M. Deo & Another v. Mohamed Musa Osman**, Civil Application No. 78/17 of 2020 (all unreported).

In the instant application, the applicant has not given any semblance of an explanation on why he missed out on the timeframe set out for that. In my considered view, this is an inexcusable delay which has lasted for far too long a period to be wished away. As I accede to Mr. Balomi's prayer for striking out the application, I am constrained to follow the footsteps set by this Court in **Barclays Bank Tanzania Limited v. Phylisia Hussein Mchemi** Civil Appeal No. 19 of 2016; and **M/S. P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020 (both unreported) in both of which the ruling of the High Court (Kalegeya, J., as he then was) in **John Cornel v. A. Grevo (T) Limited**, HC-Civil Case No. 79 of 2006 (unreported), was cited with approval. It was held as follows:

*"However unfortunate it may be for the Plaintiff, the Law of Limitation on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."*

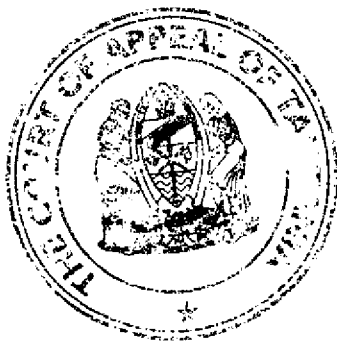
This is the fate that befalls the instant application. It is not timeous and simply untenable. In the result, the same is struck out with costs.

Order accordingly.

**DATED at DAR ES SALAAM** this 20<sup>th</sup> day of November, 2023.

M. K. ISMAIL  
**JUSTICE OF APPEAL**

This Ruling delivered this 21<sup>st</sup> day of November, 2023, in the presence of Mr. Alex Balomi, learned counsel for the Respondent and in the absence, counsel for the Applicant is hereby certified as a true copy of the original.



  
S. P. MWAISEJE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**