

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
CIVIL APPLICATION NO. 566/01 OF 2021

**FATMA MOHAMEDALI REMTULLA KARA (As an administratrix
of the estate of the late Remtulla Kara) APPLICANT**

VERSUS

SALIM SAID SALIM & 7 OTHERS RESPONDENTS

**(An application for extension of time to file for a revision against the
judgment and decree of the High Court of Tanzania, Dar es Salaam District
Registry at Dar es Salaam)**

(Rwizile, J)

**Dated the 1st March, 2021
in**

Land Case No. 82 of 2016

RULING

14th & 21st November, 2023

MGEYEKWA, J.A;

Before me is an application for extension of time made under rules 4(2) (b), (c) 10, and 48(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) seeking the indulgence of the Court to exercise its discretion to extend time within which to assail by way of revision the decision of the High Court (Land Division) in Land Case No. 82 of 2016. The notice of motion is supported by the affidavits affirmed by Fatma Mohamed Remtulla Kara, the

applicant and Nazimraza Rizvi Sayyed Ashiq Abbas Murtaza, the applicant's friend. The 1st, 6th, 7th and 8th respondents did not file any affidavits in reply, but the 2nd, 3rd, 4th and 5th, respondents did.

The brief facts giving rise to the present motion are pegged in the affidavit in support of the application which states that: The 1st respondent who presented himself as the administratrix of the estate of the late Remtulla Kara lodged a Land Case No. 82 of 2016 at the High Court (Land Division) against the respondents. He claimed for a declaration order that Plot No. 1, Block 73 with a Certificate of Title No. 2124, Livingstone Street, Kariakoo, Dar es Salaam is the estate of the late Remtulla Kara under his administration. Having heard the evidence from all parties, on 1st March, 2021, the High Court delivered its judgment in favour of the 1st respondent.

It appeared that the applicant herein was unaware of the pending case at the High Court until when one Nazimraza Rizvi Sayyed Ashiq Abas Murtaza informed her that the 1st respondent was claiming to be the surviving relatives of the late Remtulla Kara, and they had successfully petitioned for grant of letters of administration of the estate of the late Remtulla Kara. Thereafter, the applicant applied for revocation of the letter of administration

granted to the 1st respondent and the court delivered its decision in favour of the applicant. On 16th July, 2021, the applicant was appointed as an administratrix of the estate of the late Remtulla Kara.

Aggrieved, the applicant is seeking to assail the decision of the High Court, hence, lodged the instant application for extension of time to file an application for revision out of time.

When the application was placed before me for hearing, the applicant was duly represented by Mr. Emmanuel Nasson, learned counsel. On the other hand, Mr. Samson Mbamba represented the 1st respondent. The 2nd, 3rd, 4th and 5th respondents had the legal service of Ms. Neema Kayuni, learned counsel. The 6th, 7th and 8th respondents were represented by Ms. Happiness Nyabunya assisted by Ms. Lucian Kikala both learned State Attorneys.

Noteworthy, when invited to address the Court in support of the application, Mr. Mbamba, Ms. Kayuni and Ms. Nyabunya outrightly conceded to the present application.

In his written submission, Mr. Nasson was brief and straight to the point. He submitted that the applicant in this application is the administratrix of the estate of the late Remtulla Kara, whose property is in dispute and she was not aware of the existence of the Land Case which was delivered on 1st March, 2021 because she was not a party to the case. He added that the 1st respondent who was the plaintiff in the suit is not related to the applicant and, hence, a stranger to her grandparent's estate.

As regards to the ground on illegality which, as alluded to above, forms the crux of the applicant's application, Mr. Nasson argued that the High Court decision is tainted with illegality as it can be manifestly observed on the impugned judgment because the 1st respondent had obtained the letters of administration fraudulently, purporting to represent the late Remtulla Kara. To buttress his position, he referred me to paragraphs 5, 7, 8 and 10 of the applicant's supporting affidavit.

On the ground of *locus standi*, the learned counsel referred me to paragraph 18 (d) and (e) of the affidavit and averred that the 1st respondent lodged the suit as a legal representative of the late Remtulla Kara but the same was not proved. The applicant's counsel invokes this Court's

jurisprudence in the case of **Registered Trustees of Kanisa la Pentekoste Mbeya v Lamsom Sikazwe & 4 Others**, Civil Application No. 191/06 of 2019 and argued that the High Court granted relief while the suit was brought under a person who had no *locus standi*, hence, rendered the whole judgment illegal.

I have considered the notice of motion and the affidavits in support of the application and it is all about the exercise of discretion by the Court on whether the applicant has met the criteria and the principles of law to benefit as such to extend time as stipulated under rule 10 of the Rules.

Similarly, the principles that are to guide the Court in the exercise of its discretion to extend time are succinctly summarised in the decision of the Supreme Court of Kenya, **Nicholas Kiptoo Korir Arap Salat v Independent Electoral & Boundaries Commission & 7 others**, [2014] eKLR, it delineated the following as:-

“the underlying principles that a Court should consider in the exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;

- 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;*
- 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;*
- 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*
- 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;*
- 6. Whether the application has been brought without undue delay, and*
- 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."*

Another factor to be considered is whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged. Among the decisions on this point include, **Chiku Harid Chonda v Getrude Nguge Mtinga as Administratrix of the late Yohane Claude Dugu**, Civil Application No. 509/01 of 2018 (unreported) and **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, Civil Application No. 6 of 2016 [2016] (20 October 2016 TanzLII.

In the application under my consideration, the period that needs to be accounted for is from 27th October, 2021 when the applicant was aware of the existence of the impugned judgment to the date when he lodged the instant application on 6th July, 2022. I have perused the applicant's affidavit and noted that the period from 1st May, 2021 to 27th October, 2021 portrays the diligence on the part of the applicant in taking necessary steps after becoming aware of what transpired with respect to the estate of the late Remtulla Kara. In the case of **Stanzia Stanley Kessy v The Registered Trustees of Agricultural Inputs Trust Fund & 3 Others**, Civil Application No. 46 of 2005, the Court stated that: -

"In fairness, I think the applicant took all the necessary steps with reasonable diligence soon after becoming aware of what had transpired".

In my considered view, the sequence of events from the above explained period, I hold that the applicant has accounted for each day of delay from the period starting from 1st May, 2021 to 27th October, 2021.

In addition, the applicant was duty-bound to account for each day of delay from 27th October, 2021 when the applicant was aware of the existence

of the impugned judgment to 10th November, 2021 when she lodged this application. The averment of the applicant in paragraphs 15 and 16 of her affidavit is to the effect that on 28th October, 2021, she engaged a lawyer to assist her in preparing legal documents. After a thorough perusal, the applicant's lawyer found two pending applications in the Court namely; Civil Application No. 191/01 of 2021 and Civil Application No. 253/17 of 2021 in respect to Land Case No. 82 of 2016. Thereafter, on 29th October, 2021, he wrote a perusal letter (annexure A-9). It is unfortunate, the applicant did not show how, and what contributed to the delay from 29th October, 2021 when he wrote a perusal letter to 10th November, 2021 when he lodged the instant application. In our previous decision of **Wambele Mtumwa Shahame v Mohamed Hamis**, Civil Reference No. 8 of 2016) [2018] TZCA 39 (6 August 2018) TanzLII, the Court observed that:-

"It is already a well-settled rule since more than 10 years ago in an unbroken chain of this Court's decision to the effect that in the application of this nature the applicant is obliged to account for the delay of the every day within the prescribed period".

It is my considered observation that in the current application, the applicant did not account for each day of delay from 29th October, 2021 to 10th November, 2021.

Regarding the ground of illegality, it is the law that for illegality to be considered a good cause for extension of time, it must be apparent on the face of the record. See **Ally Salum Said v Idd Athumani Ndaki**, Civil Application 450 of 2021) [2023] TZCA 191 (19 April 2023) TanzLII, the Court held that: -

"We are of the considered opinion that the learned Judge ought to have exercised his discretion judiciously to consider even the ground of illegality which was also pleaded by the appellant because "sufficient reason" does not only entail reasons of delay but also sound reasons for extending time. In particular, whether the ground of illegality raised by the appellant was worth consideration in determining whether or not to grant the application".

In the application at hand, the illegality is alleged to reside in the powers exercised by the High Court in the hearing of Land Case No.82 of 2016. The applicants in paragraph 18 (d) and (h) of the affidavit in support of the application, has raised a point that hinge on illegality. They claimed

that the 1st respondent had no *locus standi* because he sued the other respondents in his own capacity as gleaned from the judgment in Land Case No. 82 of 2016 (annexure A-1). Looking closely at the above points, I am persuaded that the said illegality deserves to be termed so. The applicant has raised a point of law of sufficient importance to warrant an extension of time despite the applicant's failure to account for the delay. In the case of **Attorney General v. Emmanuel Marangakisi (as Attorney of Anastansious Anagnostou) & 3 Others** (Civil Application No. 138 of 2019) [2023] TZCA 63 (24 February 2023) TanzLII the Court held that: -

"In our jurisdiction, the law is settled that where illegality is an issue in relation to the decision being challenged, the Court has a duty to extend the time so that the matter can be looked into..."

The discussion above culminates in the conclusion that the applicant has shown good cause for the delay and the alleged illegality is clearly apparent on the face of the record. The same does not require long drawn process to decipher from the impugned decision.

In the upshot, this application is meritorious. It is granted as prayed. The applicant is given sixty (60) days reckoned from the date of delivery of

this ruling within which to lodge the application for revision. In the circumstances of the application, I make no order as to the costs.

Order accordingly.

DATED at DAR ES SALAAM this 21st day of November, 2023.

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Ruling delivered this 21st day of November, 2023 in the presence of Mr. Emmanuel Nasson, learned counsel for the applicant, Ms. Aziza Msangi, learned counsel for the 1st Respondent, Ms. Neema Kayuni, learned counsel for the 2nd, 3rd, 4th & 5th Respondents and Ms. Happiness Nyabunya, Principal State Attorney for the 6th, 7th & 8th Respondents is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL