

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 13/01 OF 2021

**SANGO MARIAM MADELEKE (As an Administratrix of the
estate of the late CHARLES KUDEMA) APPLICANT**

VERSUS

**LION OF TANZANIA INSURANCE COMPANY LIMITED 1ST RESPONDENT
INSURANCE & RISKS SERVICES LIMITED 2ND RESPONDENT**

**(Application for extension of time to apply for revision from the ruling of
the High Court of Tanzania at Dar es Salaam)**

(Dyansobera, J.)

**dated the 16th day of December, 2015
in
Civil Case No. 178 of 2006**

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RULING

26th September, 2022 & 12th April, 2023

MWARIJA, J.A.:

In this application, the applicant, Sango Mariam Madeleke, the administratrix of the estate of the late Charles Kudema, is seeking an order granting her extension of time to file an application for revision against the decision of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam (Dyansobera, J) in Civil Case No. 178 of 2006 dated 16/12/2015. The application which was brought by way of a notice of motion taken under Rule 10 of the Tanzania Court of

Appeal Rules, 2009 (the Rules), is supported by an 18 paragraphs affidavit sworn by Audax Kahendaguza Vedasto, advocate on 20/1/2021.

The grounds upon which the order is sought are:

- (i) The delay is supported by a reasonable and good explanation.*
- (ii) Upon discovery that she can proceed to file a revision with what she already has the applicant acted promptly to prepare and file the present application.*
- (iii) The decision to be challenged is tainted with illegality."*

In compliance with Rule 106 (1) of the Rules on 29/3/2021 Mr. Vedasto filed his written submission in support of the application.

The 1st respondent opposed the application through an affidavit in reply sworn by Octavian William Temu, advocate on 8/2/2021. He also filed reply written submission in compliance with Rule 106 (7) of the Rules.

At the hearing of the application, Mr. Audax Kahendaguza Vedasto appeared for the applicant while the respondents, who were duly served did not enter appearance. As stated above, the 1st respondent had however, filed written reply submission and thus in terms of Rule 106

(12) of the Rules, was deemed to have appeared. As for the 2nd respondent who did not file any written submission despite having been served, hearing of the application proceeded in its absence under Rule 63 (2) of the Rules.

Submitting in support of grounds (i) of the notice of motion, Mr. Vedasto argued that the delay in filing the application within the prescribed time, was due to the reason that the applicant was awaiting to be supplied with certified copies of proceedings, ruling and drawn order which he immediately sought to be provided with after delivery of the decision on 16/12/2015. He referred the Court to the letter of the same date of the delivery of the ruling. In the letter, the applicant expressed her intention to file an application for revision against the ruling.

Citing the case of **Benedict Mabalanganya v. Romwald Sanga** [2005] EA 326, Mr. Vedasto argued that, it is a requirement that, when filing an application for revision, the applicant must attach a copy of the proceedings. The learned counsel went on to submit that, following his request through the said later and after several reminders and follow-ups, on 2/6/2016 the applicant received not only an incomplete set of certified copies but some of which had errors and gaps. He thus

requested for the missing documents and the rectified copies which until the time of filing this application, the same had not be supplied despite several reminder letters, including those of 25/8/2019, 17/2/2020 and 29/6/2020 as well as physical follow-ups.

It was Mr. Vedasto further submission that, he decided to institute the application without the documents after becoming aware of the position taken by the Court in the case of **Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017 (unreported), the case which was decided after the advent of the overriding objective principle. He argued that, in this application, the missing documents are not necessary for the consideration of the issue which arise for determination. With regard to the gaps, he contended that, the same do not affect perfect comprehensibility of the proceedings because they are at the areas which are not material to the issues in question.

He argued further that, the reason for the High Court to strike out Civil Case No. 178 of 2006 on account of expiry of speed track on 26/3/2015 and the grounds for dismissing the application for review on 16/12/2015, are contained in the respective rulings as well as the proceedings which have been attached to the application. Concluding

on this ground, the learned counsel submitted that, the delay in filing the application was not due to the negligence or lack of diligence on the part of the applicant but was due to the reasons stated above.

In response to the submissions made in support of this ground (i) of the notice of motion, Mr. Octovian William Temu, argued in his written reply submission that, the delay was not due to a sufficient cause as contended by the applicant. It was his submission that, after having encountered the problem of being supplied with incomplete copy of the proceedings, the counsel for the applicant should have applied for a certificate of delay under Rule 90 (1) of the Rules so that the period spent in the preparation of certified copies of proceedings could be excluded.

With regard to the decision taken by the counsel for the applicant to file the application without the missing documents, Mr. Temu argued that the filing should have been done after applying and obtaining an order excluding those document from forming part of the copy of the proceedings to be attached to the application. On the cited case of **Gasper Peter** (supra), the learned counsel argued that, in that case the Court did not decide that, a party filing an appeal or application my

determine which documents should be or should not be included in the record at his or her own discretion.

From the submissions of the learned counsel for the parties, there is no dispute that the decision which is sought to be challenged in revision was delivered on 16/12/2015. On the same date, the applicant applied for certified copies of the proceedings and the ruling for the purpose of attaching them to the intended application for revision. It is a correct position as submitted by Mr. Vedasto that, when an application for revision is initiated by a party, it must be accompanied with a certified copy of proceedings. In the case of **SGS Societe General De Surveillance SA and Another v. VIP Engineering and Marketing Limited and Another**, cited by the learned counsel, the Court observed that:

"...this Court has severally ruled that in an application for revision by a party, the party must attach a copy of the proceedings to the notice of motion. We endorse it as still good practice amounting to a rule of law."

In the circumstances, since the applicant had timely applied to be supplied with the copy, the period of sixty days prescribed under Rule 65 (4) of the Rules for filing the intended application could not start to

run until a copy of the requested proceedings is supplied to her. The submission by Mr. Vedasto is that, until the date of filing the application on 25/1/2021, the missing part of the proceeding had not been supplied to the applicant despite several reminders and physical follow-ups. That contention was not opposed by the learned counsel both in his affidavit in reply and written reply submission. The contention that, until the date of filing this application, the applicant had not been supplied with the missing documents, was also not opposed by the 2nd respondent who did neither file an affidavit in reply nor written reply submission. In the circumstances, the delay of filing the intended application for revision if due to a sufficient cause.

The argument by Mr. Temu on the import of the decision in the case of **Gasper Peter** (supra) and the correctness or otherwise of the intention by the applicant to file the intended application in exclusion of the documents which to her are no longer necessary, is with respect, not a matter for determination in this application for extension of time. It concerns the competence or otherwise of an application which has not been filed.

I have found above that, since it is a mandatory requirement, for a party who files an application, to attach a certified copy of proceedings

and since, until the date of filing this application, the applicant had not been supplied with the missing part of the proceedings, the prescribed period of limitation for filing the intended application had not started to run. In the circumstances the delay from the period between 16/12/2015 when the ruling which is intended to be challenged in revision was delivered and 25/1/2021 when this application was filed, was due to sufficient cause.

For the foregoing reasons, the application is hereby granted. The applicant is granted extension of sixty days from the date of delivery of this ruling to file her intended application for revision.


The respondents shall bear the costs of this application.

DATED at **DAR ES SALAAM** this 5th day of April, 2023.

A. G. MWARIJA
JUSTICE OF APPEAL

The Ruling delivered this 12th day of April, 2023 in the presence of Mr. Masinde Chisomo holding brief for Mr. Audax Vedasto, learned counsel for the applicant, Mr. Octavian Temu, learned counsel for the 1st respondent and in the absence of the 2nd respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL