IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

CIVIL APPLICATION NO. 430 OF 2021

JOYCE JORAM LEMANYA.....APPLICANT

VERSUS

PATRICIA PATRICK LEMANYA.....1ST RESPONDENT

NAOMI PATRICK LEMANYA.....2ND RESPONDENT

(Application for extension of time to file an application for leave to appeal against the decision of the High Court of Tanzania at Dodoma)

(Sehel, J.)

dated the 23rd day of September, 2016

in

Land Appeal No. 14 of 2015

.....

RULING

27th April & 10th May, 2023

KENTE, J.A.:

This is an application by the applicant Joyce Joram Lemanya seeking an order for enlargement of time within which to file an application for leave to appeal to this Court to challenge the decision of the High Court (sitting at Dodoma) in Land Appeal No. 14 of 2015 which was handed down on 23rd September, 2016.

The application is made (as a "second bite") by way of a notice of motion taken under Rules 10 and 48(1) and (2) of the Tanzania

Court of Appeal Rules, 2009 (hereinafter referred to as the Rules). In support of the application, is an affidavit deponed by the applicant. The main ground advanced by the applicant in support of the application is that the impugned decision of the High Court is fraught with some material illegality. Elaborating, the applicant claimed in his initiating affidavit that, the assessors who sat with the Chairman of the Dodoma District Land and Housing Tribunal (hereinafter the DLHT) were allowed to cross-examine witnesses and, that after closure of the parties' case, they did not give their respective opinion. It is the applicant's contention that on this account, the decision of the DLHT was illegal for want of the assessors' opinion.

Opposing the application, the respondents denied every material averment made by the applicant putting her on strict proof of her assertions. In particular, the respondents contended that, there is nothing on the impugned judgment of the High Court which could be said to be illegal. Given the circumstances, they implored me to dismiss the application for lack of merit.

During the hearing of the application, whereas the applicant was represented by Ms. Stella Thomas Nyaki learned advocate, Mr. Gwakisa Kakusulo Sambo appeared for the respondents.

As expected, the first and most important point taken by Ms. Nyaki on behalf of the applicant is that, the impugned decision of the High Court which is sought to be challenged on appeal is fraught with some material illegality in that the assessors who sat with the Chairman of the DLHT were wrongly allowed to cross-examine witnesses as if they were testing the credibility of the said witnesses. As if that was not bad enough, the counsel for the applicant contended further that, after closure of the parties' case, the said assessors did not give their respective opinion as required by law. Among others, Ms. Nyaki relied on our earlier decisions in the unreported cases of **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein and Three Others**, Civil Application No. 6 of 2016 and **Josephina A. Kalalu v. Issack Michael Malya**, Civil reference No. 2010 to underscore the point that, if there is an allegation of illegality of the impugned decision, an extension of time should be granted to enable the said illegality to be addressed by an appellate court.

Probed by the court as to whether or not the application for extension of time was solely based on the alleged illegality of the decision of the High Court or that the applicant had as well accounted

for the delay, at first Ms. Nyaki showed indecision wavering between the two grounds. After a while, she finally settled on a two – tier approach submitting that, the applicant had accounted for the delay and that by any standards, the decision of the High Court was thick with material illegality.

On behalf of the respondents, Mr. Sambo made contrary submissions. In the first place having adopted the respondents' affidavit in reply and their written submissions, he contended that the applicant had failed to account for each day of the delay. Elaborating and counting from 14th August, 2019 when the High Court (Mlacha, J) delivered its ruling dismissing the applicant's application for leave to appeal to 24th September, 2019 when she issued a notice to withdraw the wrongly filed notice of appeal, the learned counsel submitted that the applicant had remained idle for almost fourty days which were not accounted for. Going forwards, Mr. Sambo submitted that the applicant had not accounted for the period between 3rd June, 2021 when the first application (Civil Application No. 118/03 of 2020) which was before my sister Kerefu, JA was withdrawn for being defective, up to 14th July, 2021 when the applicant filed the present application.

With regard to the argument by Ms. Nyaki that the applicant was not idle as she was all along in and out of court pursuing what she believed to be her rights, relying on our decision in the case of **Ngao Godwin Losero v Julius Mwarabu** civil Application No. 10 of 2015 (unreported), Mr. Sambo submitted briefly that, ignorance of the law has never been a good cause for extension of time.

Coming to the alleged illegality of the decision of the High Court, Mr. Sambo contended that, the complaint that the assessors who sat with the Chairman in the DLHT were wrongly allowed to cross-examine witnesses and that they did not give their opinion after closure of the parties' case, was being raised for the first time and therefore, being an afterthought, it could not form the basis of an extension of time. On the authority of the unreported case of **Charles Bode v Republic**, Criminal Appeal No. 46 of 2016, the learned counsel urged that, I should look at the alleged cross-examination by the assessors and see if its effects, if any, were fatal. In that connection he also relied on our recent decision in the case of **Felician Muhandiki v. The Managing director Barclays Bank Tanzania Limited**, Civil Appeal No. 82 of 2016 (unreported) regarding the settled jurisprudence that, procedural irregularities

cannot vitiate the proceedings if no prejudice has been occasioned to the complaining party. The learned counsel challenged the applicant for not demonstrating in her supporting affidavit how she was prejudiced by the alleged illegality of the High Court decision.

Regarding the notice of appeal which the applicant had wrongly lodged in this Court seeking to challenge the decision by Mlacha, J. instead of moving the Court in terms of rule 45A (1) of the Rules, Mr. Sambo contended that, the applicant was sort of riding two horses at once as the said notice is still lying in the Court's Registry contrary to Mr. Nyaki's claim that it has already been withdrawn.

Submitting in rejoinder, Ms. Nyaki contended that, the applicant had been able to account for the whole period of the delay as she had demonstrated that, following the impugned judgment of the High Court, she was all along in the courts' corridor pursuing her rights but only to be delayed by some procedural hurdles. Regarding Mr. Sambo's argument that ignorance of the law or court procedures has never been an excuse, Ms. Nyaki contended in an evasive way that, she had not said that they were ignorant of the law but rather the mainstay of their argument is on the illegality of the proceedings in the lower courts.

As for the arguments that the applicant was riding two horses at the same time, the learned counsel submitted in repy that, the applicant cannot be said to be pursuing both the appeal and an application for revision as she has already applied to withdraw the notice of appeal which was wrongly filed in Court. Confronted by Mr. Sambo who submitted that there is no court order showing that the wrongly filed notice of appeal has already been withdrawn, Ms. Nyaki could only surmise that, the said order must have been issued and that it could be laying somewhere in the Court's main registry in Dar es Salaam.

Regarding the hotly contested illegality of the judgment of the High Court on which Mr. Sambo submitted that this ground ought to have been raised before the first appellate court, Ms. Nyaki submitted in a brief rejoinder that, illegality can be raised at any time provided that it is on the record and further that, the details of the said illegality would be addressed during the hearing of the intended application for revision. She accordingly reiterated her prayer that the application be granted.

It is worth noting at this stage, as I strategize my approach to this application that, in any application of the present nature, where

illegality is raised regarding the judgment sought to be revised, the court is enjoined to grant the application for extension of time to pave the way for consideration of the matter. (vide the **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 185). It is however important to draw attention to the requirement that, it is always upon the applicant to demonstrate that the said illegality is apparent on the face of the record.

Coming back to the present application, having carefully gone through the impugned judgment of the first appellate court, I do take serious note of the fact that indeed, the complaint that the assessors who sat with the Chairman of the DLHT were allowed to cross-examine witnesses and that they did not give their respective opinion to assist the Chairman in arriving at the decision of the Tribunal, was not raised as a ground of complaint before the first appellate court. It follows therefore that, except for the fact that the above is a procedural requirement of the law to which I cannot turn a blind eye, it seems to me that this complaint was brought so belatedly by the applicant as an afterthought. However, considering it on merit as I should, I am bound by the law which requires me to look at the

impugned record and judgment of the High Court. In view of this, and as such, the complaint was not raised during the appeal I think, it would be incorrect to find that the assessors did not give their opinion as alleged by the applicant. I should also mention here that, where an application for extension of time is based on the allegation of illegality of the decision sought to be revised, the Court is not expected to laboriously scan through the entire record of the lower courts for the possible illegality. For, the law is clear that, for illegality to form the basis of an extension of time, it must be clearly visible upon the face of the record.

With that said, I find as demonstrated that, the applicant has fallen short of establishing that there is an apparent illegality on the impugned judgment of the High Court to warrant enlargement of time to file application for revision.

Turning now to the question as to whether or not the applicant has accounted for each day of delay, the submission by Mr. Sambo is, I think, well founded. Indeed, in the first place, assuming but without accepting that she was always in and out of court in the pursuit of her rights as alleged by Ms. Nyaki, the applicant has not accounted for the 40 days period reckoned from 3rd June, 2021 when the Court

delivered its ruling striking out her first application for being defective to 14th July, 2021 when she lodged the present application. In the second place, she has not accounted for another 26 days' delay counted from 28th August, 2019 after expiry of the 14 days period within which she was required in terms of rule 45A (1) of the Rules to apply to this Court as a second bite after the High Court had delivered its ruling dismissing the application for leave to appeal, to 24th September, 2019 when she issued a notice seeking to withdraw the notice of appeal which was wrongly lodged in Court.

There are several decisions of this Court in which we have taken a consistent position that, ignorance of the law or being in and out of the court pursuing a wrong remedy under the law as Ms. Nyaki would have us call it, cannot feature as a good cause for extension of time. (See for instance, **Ngao Godwin** (supra) and **Charles Salugi v. Republic**, Criminal Application No. 4 of 2011 (unreported)). It follows in my view that, the applicant's alleged countless efforts and trips to court in the pursuit of her rights, is not enough to justify an extension of time, in the circumstances of this case.

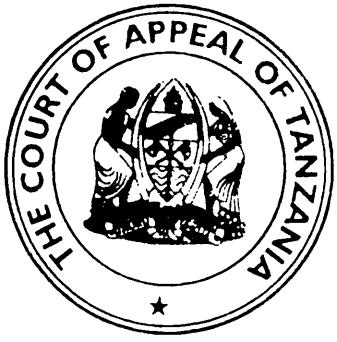
For the reasons I have endeavoured to state, I find in the ultimate event that, the applicant has not demonstrated any good

cause to warrant an extension of time. In the result, I find the application to have no merit and I accordingly dismiss it with costs.

DATED at **DODOMA** this 10th day of May, 2023.

P. M. KENTE
JUSTICE OF APPEAL

The Ruling delivered this 10th day of May, 2023 in the presence of the Applicant in person and in the absence of the Respondents is hereby certified as a true copy of the original.



S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL