IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 138 OF 2019

THE ATTORNEY GENERAL.....APPLICANT

VERSUS

EMMANUEL MARANGAKISI (*AS ATTORNEY OF ANASTANSIOUS ANAGNOSTOU)*.....1ST RESPONDENT

THE ADMINISTRATOR GENERAL.....2ND RESPONDENT

GEORGIO ANAGNASTOU.....3RD RESPONDENT

OURANIA ANAGNASTOU.....4TH RESPONDENT

[Application for extension of time to apply for revision against the decision of the High Court of Tanzania, Main Registry at Dar es Salaam]

(Twaib, J.)

dated the 13th day of May, 2011

in

Civil Case No. 1 of 2011

.....

RULING

8th & 24th February, 2023

KWARIKO, J.A.:

This application has been taken by a notice of motion preferred under rule 10 of the Tanzania Court of Appeal Rules, 2009 (henceforth the Rules). The applicant is seeking for extension of time within which to apply for revision against the decision of the High Court of Tanzania, Main Registry at Dar es Salaam in Civil Case No. 1 of 2011. The notice of

motion is supported by an affidavit of Kause K. Izina, learned State Attorney.

On the other hand, the first respondent filed his own affidavit in reply to oppose the application, whilst that of the third and fourth respondents was sworn by their learned advocate, Ms. Flora Jacob. The second respondent did not file any affidavit in reply. Further, the appellant and the first, third and fourth respondents filed their respective written submissions for and against the application in terms of rule 106 (1) and (7) of the Rules.

The material facts of the case upon which this application arose can briefly be stated as follows: Diana Artemis Ranger, a Tanzanian lady of Greek origin died intestate on 7th May, 2006 in Dar es Salaam leaving behind among others, a landed property situated at Plot No. 648 Upanga Dar es Salaam under Certificate of Title No. 186172/28. Upon her demise, the first respondent (her nephew) was appointed to administer her estate. Subsequently, on 9th October, 2009, this Court revoked his appointment in Civil Appeal No. 51 of 2007 and, in his place the second respondent was appointed.

It is on record that in 2011, the first respondent instituted a suit against the second respondent vide Civil Case no. 1 of 2011 before the

High Court for determination whether Anastansious Anagnostou, the deceased's brother and a foreigner could inherit the deceased's landed property in Tanzania.

The High Court (Twaib, J) answered that question in the affirmative that is to say; a foreigner could inherit land in Tanzania. The High Court further ordered the second respondent to bequeath the disputed property to the said Anastansious Anagnostou or his duly appointed attorney.

The applicant averred that, not being a party to the said case, he became aware of that decision on 19th March, 2019 when he received a letter from the office of the second respondent expressing difficulties it had faced to bequeath the disputed property to a non-citizen. The same concern was expressed by the Commissioner for Lands in his letter dated 22nd March, 2019.

Now, since the applicant was not a party to Civil Case No. 1 of 2011, he could not appeal against its decision and being out of time to act, he has preferred this present application upon the following grounds: **one,** the Civil Case No. 1 of 2011, among other things, has affected the interests of the Government; **two,** there exist serious irregularities that amount to exceptional circumstance in the conduct of

the said case which call for immediate intervention by the Court of Appeal before further injustice is inflicted to the entire society; **three,** the interpretation of section 20 of the Land Act [CAP 113 R.E 2002] (the Land Act) by the High Court was not based on probate matters which lead to the decision by that court that a non-Tanzanian can own land by way of bequeath while under the law, a non-Tanzanian cannot own land save for investment purposes; and **four,** the decision of the High Court is contrary to the Constitution of the United Republic of Tanzania, Land Policy and the Land Act, thus calling for quick intervention by the Court of Appeal.

On the day the application was called on for hearing, the applicant was represented by Mr. Camilius Ruhinda, learned Senior State Attorney assisted by Ms. Doreen Mhina, learned State Attorney. On the adversary side, Mr. Samuel Mutabazi, learned State Attorney appeared for the second respondent, whilst the third and fourth respondents had the services of Mr. Emmanuel Safari, learned counsel. The first respondent did not enter appearance though he was duly served through publication in the Daily News and Mwananchi Newspapers dated 20th January, 2023. The hearing of the application thus proceeded in his absence as per rule 63 (2) of the Rules, Nonetheless, his written submissions, which he had

lodged in Court on 25th February, 2021 will be considered in the course of this ruling in terms of rule 106 (12) of Rules.

Upon taking the stage to argue the application, Mr. Ruhinda adopted the notice of motion, the supporting affidavit and the written submissions. In the submissions in support of the application, the learned counsel reiterated the affidavit evidence narrating the chronological account of what transpired in this matter. He also argued that the applicant has shown good cause for the grant of this application. To support his argument, he cited the Court's decision in **Pan Construction Co. Ltd & Another v. Chawe Transport Import and Export Co. Ltd,** Civil Application No. 20 of 2006 (unreported).

It was submitted further for the applicant that, there is sufficient material in this application to enable the Court to exercise its discretion to grant extension of time to file revision. The applicant's counsel supported this argument with the Privy Council decision of **Ratnam v. Cumarasamy** [1965] 1 WLR 8. As for consideration of the alleged illegality as a good cause for grant of this application, the learned counsel cited the Court's decisions in the cases of **Transport Equipment Limited v. D. P. Valambhia** [1993] T.L.R. 91; **Kashinde Machibya v. Hafidhi Said,** Civil Application No. 48 of 2009; and

Mohamed Salum Nahdi v. Elizabeth Jeremiah, Civil Application No. 14 of 2017 (both unreported).

On his part, in opposition of the application, the first respondent submitted that the applicant is bound by the orders which were made by the trial court since the second respondent who was a party to that case had consented to them. He contended further that the interpretation made by the trial court was very clear in that it made clear distinction between acquisition of land by disposition and acquisition by the operation of law. He argued that, in any case, he, the first respondent, is a Tanzanian citizen.

For his part, Mr. Mutabazi intimated to the Court that he was not opposing the application, hence did not have much to say.

As regards the third and fourth respondents, Mr. Safari adopted the affidavit in reply and the written submissions and made a brief oral clarification on the issues raised in the application. In the submission, the learned counsel argued that the applicant was aware of the trial court's decision for the following reasons: **One,** that, one of his senior officers, Mr. Gilbert Peter Buberwa, learned State Attorney represented the second respondent who was the defendant therein. **Two**, in the Civil Case No. 225 of 2013 before the High Court of Tanzania at Dar es

Salaam involving the disputed property, which was decided on 2nd January, 2018, the Commissioner for Lands and the Administrator General, were represented by the State Attorney and the notice of appeal against that decision was filed by Mr. Hangi Chang'a, learned State Attorney.

Three, the applicant who is supposed to receive reports from the Administrator General and other institutions under his office in terms of section 10 (2) of the Office of the Attorney General (Discharge of Duties) Act (the Act) should not be heard to claim that he was not aware of the impugned decision. **Four,** the two letters upon which the applicant has relied upon were addressed to the Solicitor General and not to the applicant.

It was Mr. Safari's further contention that the delay from 2011 to 2019 has not been accounted for by the applicant. And in any case, he argued, when the second respondent reported to the applicant about the impugned decision in March, 2019, he ought to have supplied him with all necessary documents hence there was no need to follow up relevant documents from other government offices as claimed by the applicant for all this period until this application was filed on 25th April, 2019. He added that the applicant has also failed to account for each

day of delay. Basing on his arguments, the learned counsel submitted that the applicant has failed to satisfy the conditions upon which the Court can grant extension of time to file the said revision. In support of his contention, Mr. Safari cited the Court's decisions including; **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010; **Mr. Manson Shaba & 143 Others v. Ministry of Works & Another,** Civil Application No. 244 of 2015; and **Wambele Mtumwa Shahame v. Mohamed Hamis,** Civil Reference No. 8 of 2016 (all unreported).

As to the alleged illegality of the impugned decision, Mr. Safari argued that the same was not raised in the affidavit. He contended that, the issue of ownership of land by transmission of law by a non-Tanzanian mentioned in the notice of motion is not provided for under section 20 of the Land Act. In addition, the learned counsel argued that illegality should be apparent on the face of the record, and the impugned decision did not say anything about allocation of land by transmission of law. He fortified his argument with the decision of the Court in the case of **Mathew T. Kitambala v. Rabson Grayson & Another**, Criminal Appeal No. 330 of 2018 (unreported).

Mr. Safari wound up his submission by urging the Court to decline the grant of this application since the delay to file the application sought has been through the applicant's self-induced negligence. He supported his argument by this Court's decision in the case of **Jane Chabruma v. NMB Bank PLC,** Civil Application No. 12 of 2017 (unreported). With these arguments, the learned counsel implored the Court to dismiss the application with costs.

In rejoinder, Mr. Ruhinda argued that the State Attorney who represented the second respondent was working in that office which is independent from the office of the applicant. He submitted further that the provisions of section 10 of the Act giving the applicant powers to receive work reports from the institutions under his office including the second respondent was enacted through Act No. 7 of 2018 which came into force on 25th September, 2018 long after the date of the impugned decision in 2011.

In relation to the complaint regarding Civil Case No. 225 of 2013, Mr. Ruhinda argued that the applicant was not a party to that case, and in any case, the State Attorneys who appeared in that case reported to the parties concerned and not to the applicant. As regards the alleged

illegality, the learned Senior State Attorney contended that the same has been sufficiently explained under paragraphs 8 to 14 of the affidavit.

I have considered the submissions for and against the application. The law is settled that in an application of this nature, the applicant is required to show good cause why he failed to do what he was supposed to do within the prescribed time. This is the spirit of rule 10 of the Rules which provides:

> *The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.*

This Court has, in various decisions, stressed that the applicant should show good cause before time can be extended for him to do a certain act. These decisions include those in the cases of **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority,** Civil Reference No. 08 of 2003 at Dar es Salaam and **Sebastian Ndaula v. Grace Rwamafa,** Civil Application no. 4 of 2014 (both unreported).

However, what constitutes good cause has not been codified, although this Court has in various instances stated a number of factors to be considered. These include; whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; the lack of diligence on the part of the applicant, the applicant be able to account for the entire period of delay and existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged. (See for instance the cases of **Lyamuya Construction Co. Ltd** (supra); **Osward Masatu Mwizarubi v. Tanzania Processors Ltd,** Civil Application No. 13 of 2010; and **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority,** Civil Application No. 146 of 2016 (both unreported).

Now, the question which calls for determination is, whether the applicant has shown good cause for this Court to exercise its discretion to grant extension of time to file revision. It is the applicant's assertion that, because he was not a party to the impugned decision, he could not appeal against it, that is why he is intending to file an application for revision to challenge it. Mr. Safari has vigorously attacked this assertion. He argued that the applicant has a right of appeal since he represented the Commissioner for Lands who was a party to the said Civil Case No.

225 of 2013 in which the Civil Case No. 1 of 2011 was the center of controversy. He added that the second respondent who was also one of the parties had actually filed a notice of appeal against the decision in that case. What I can say at this stage in relation to Civil Case No. 225 of 2013 is that the same is not before me hence I have no mandate to deliberate on it. What the applicant is intending to challenge is Civil Case No. 1 of 2011.

What I have stated above also goes to the claim by Mr. Safari that the applicant must have been aware of this matter through the proceedings in Civil Case No. 225 of 2013. If I may repeat, this case is not before this Court and it is not the one the applicant is intending to challenge.

Mr. Safari has also contended that the applicant was aware of the impugned decision from its inception because the second respondent who was a party therein was represented by a State Attorney who is an officer under the supervision of the applicant. It is my considered view that, even if the applicant is the supervisor of the second respondent, these are two different offices whose affairs can only be known upon information by each one. If the second respondent did not inform the

applicant of the existence of the impugned decision, it is not the fault of the latter.

Another question is whether the applicant should have known about the impugned decision through reports he is supposed to receive from the institutions under his office including the second respondent in terms of section 10 of the Act. This provision states:

> *"10. -(1) Without prejudice to the generality of Article 59B of the Constitution, the Office of the Attorney General shall advise and maintain a link with the National Prosecutions Service, the Office of the Solicitor-General and the Administrator-General for better carrying out of their respective duties.*
>
> ***(2) For the purposes of subsection (1), the Office of the Attorney General shall-***
>
> ***(a)receive copies of biannual performance reports from the National Prosecutions Service, Office of Solicitor General and the Administrator General;***
>
> *(b) follow-up on the implementation of the decisions reached by the Government Legal Team; and*

(c) advise the Government, the National Assembly and the Judiciary accordingly".

[Emphasis added]

I have gone through this law and found that the cited provision was enacted by Act No. 7 of 2018 which came into force on 25th September, 2018 long after the impugned decision was handed down. Therefore, the said provision was not part of the Office of the Attorney General (Discharge of Duties), Act No. 4 of 2005 which was the law applicable at the time when the impugned decision was made.

As to whether the applicant has accounted for each day of delay, in terms of rule 65 (4) of the Rules, he was supposed to file the application for revision within sixty days from the date of the impugned decision. This application was filed on 25th April, 2019 which was almost eight years of delay from the date of the impugned decision on 13th May, 2011. The applicant has asserted that he was not aware of that decision until he was informed through letters by the second respondent and the Commissioner for Lands on 15th March, 2019 and 22nd March, 2019 respectively. Mr. Safari has argued that the two letters were not addressed to the applicant but to the Solicitor General. However, taking into account that the applicant is supervisor of the second respondent

and also the said Solicitor General, there is no doubt that he first became aware of the impugned decision on 15th March, 2019.

It is trite law that, in an application for extension of time to do a certain act, the applicant is supposed to account for each day of delay. [See: **Lyamuya Construction Company Ltd** (supra); **Hassan Bushiri v. Latifa Lukio Mashayo,** Civil Application No. 3 of 2007; **Elius Mwakalinga v. Domina Kagaruki & Five Others,** Civil Application No. 120/17 of 2018; and **Ludger Bernard Nyoni v. National Housing Corporation,** Civil Application No. 372/01 of 2018 (all unreported)]. For example, in the case of **Elius Mwakalinga** (supra), the Court stated thus:

> *"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".*

Therefore, according to what I have discussed above, the period from 13th May, 2011 to 15th March, 2019 has been accounted for. It follows therefore that the applicant ought to have also accounted for the period from 15th March, 2019, when he first became aware of the impugned decision to 25th April 2019 when this application was filed.

The applicant argued that he was making communications with other offices to get relevant documents before he lodged this application. I have considered this assertion and found that it lacks proof since the applicant ought to have presented documentary evidence to support the assertion that there were ongoing communications with other offices about the matter. It follows therefore that; the applicant has failed to account for each day of the delay.

Despite the foregoing, the applicant has also alleged illegality in the impugned decision as another good cause for extension of time. It is the applicant's assertion that the trial court erred to interpret section 20 of the Land Act. On his party, Mr. Safari opposed this assertion for the reason that the said illegality was not pleaded in the affidavit and it is not apparent on the face of the record. I have combed through the notice of motion where ground number (iii) says thus:

> *"That, the interpretation of section 20 of the Land Act [Cap. 113 R.E. 2002] by the High Court was not based on Probate Matters which led to the decision by the court that a non-Tanzanian to own land by way of bequeath while in real situation by any means a non-Tanzanian cannot own land save for investment purposes."*

This ground has also been explained under paragraphs 8 to 14 of the affidavit in support of the application. In the same vein, this issue was the center of controversy before the trial court. At page 6 of the impugned decision the trial court stated thus:

> *"From the foregoing, it is obvious that the dispute in this suit revolves around the interpretation of subsection (1) of section 20 of the Land Act. It restricts the occupation of land by non-citizen in the following terms...."*

Therefore, the alleged illegality is very much apparent on the face of the record. Whether or not the trial court was correct in its decision is not the prerogative of this Court at this stage. 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 time so that the matter can be looked into. One of the celebrated decisions of the Court on this aspect is the case of **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] T.L.R 185, where it was held that:

> *"(i) Where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to*

constitute "sufficient reason" within the meaning of rule 8 (now rule 10) of the Rules for extending time;

(ii) When the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right."

In the case of **VIP Engineering and Marketing Limited & Three Others v. Citibank Tanzania Limited,** Consolidated Civil Reference Nos. 6, 7 and 8 of 2006 (unreported), the Court stated thus:

"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 (now rule 10) regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."

[See also: **Kalunga and Company Advocates v. National Bank of Commerce** [2006] T.L.R. 235; **Mohamed Salum Nahdi** (supra); **Andrew Athuman Ntandu & Another v. Dustan Peter Rima** *(As an Administrator of the Estate of the late Peter Rima),* Civil Application No.

551/01 of 2019; and **Tanzania Breweries Limited v. Herman Bildad Minja,** Civil Application No. 11/18 of 2019 (both unreported)].

Pursuant to the cited decisions, allegation of an illegality is good cause for extension of time even if the applicant has failed to account for each day of delay.

Consequently, since the applicant has alleged that there is illegality in the impugned decision, I find the application meritorious which I hereby grant. The applicant is ordered to file the intended application for revision within sixty days from the date of the delivery of this ruling. Costs of this application shall abide the outcome of the intended revision.

It is ordered accordingly.

DATED at **DAR ES SALAAM** this 23rd day of February, 2023.

M. A. KWARIKO
JUSTICE OF APPEAL

This ruling delivered this 24th day of February, 2023 in the absence of the 1st, 3rd and 4th Respondents and in the presence of Mr. Samuel Mutabazi, learned counsel for the 2nd Respondent and Ms. Lilian Samson Milumbe, learned State Attorney for the Applicant, is hereby certified as a true copy of original.

C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL