

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION No. 511/17 OF 2020

**VICENT MASANDA WAMBURA (Legal Representative
of Sigismund Christian Somnia).....APPLICANT**

VERSUS

PHILIPO NDUNGULU.....1ST RESPONDENT

**(An Administrator of the estate of the Late
Kipwele E. O. M Ndungulu)**

OMARI MUSA SIGERA.....2ND RESPONDENT

**(An Administrator of the estate of the Late
Nuru Omary Ligalwike)**

EMILY T. KIRIA.....3RD RESPONDENT

SETTY OBEID MGAYA.....4TH RESPONDENT

**(Application for extension of time to file Application for Revision
on the decision of the High Court of Tanzania (Land Division),
at Dar es Salaam)**

(Ndika, J.)

dated the 18th day of August, 2014)

in

Land Case No. 12 of 2005

.....

RULING

18th March & 2nd April, 2024

RUMANYIKA, J.A.:

This is an application for extension of time within which Vicent Masanda Wambura, the applicant to apply for revision against a judgment and decree of the High Court. The application has been premised under rule 10 of Tanzania Court of Appeal Rules, R.E 2019

("the Rules"). It is supported by an affidavit sworn by the applicant holding the powers of attorney donated by Sigismund Christian Somnia who lived in Innsbruck Austria by then, in terms of rule 30 (1) to (2) of the Rules.

The respondents did not file affidavits in reply to oppose the application.

A brief background of the application goes as follows: That the said Sigismund Christian Somnia and the second respondent had executed a sale agreement on a parcel of land which measured 195 x 87 x 57 x 195 meters situated at Kwembe Village in Kinondoni District, Dar es Salaam Region. TZS 1,800,000.00/= was the agreed sale price payable on or by 5th April 2003. It is also on record that, the said Sigismund Christian Somnia returned to Dar es Salaam from Austria, about five years later, on 23rd December 2019 and become aware of the impugned judgment. Also, it is alleged that he received a copy of the respective proceedings through Imperial Attorneys on 2nd April, 2020 and filed such a futile similar application. Further, it stated that there followed Misc. Land Application No. 187 of 2020, which was struck out on 13th October 2020. That a copy of the respective decision was availed

to Victor Kessy advocate on 14th October 2020, who filed the instant application on 27th November, 2020 for the applicant.

At the hearing of the application, Mr. Victor Kessy learned counsel represented the applicant. The 1st respondent did not appear, although he was served on 4th November, 2023, by way of publication in the Guardian Local News Paper, pursuant to the Court order dated 3rd July, 2023. The 2nd, 3rd and 4th respondents appeared in person unrepresented. With an exception of the 1st respondent who did not enter appearance, the rest did not file affidavits in reply to oppose the application.

Upon taking the floor, Mr. Kessy adopted the contents of the notice of motion and the supporting affidavit. He relied on the applicant's written submission filed on 31st January, 2023 in terms of rule 106(1) of the Rules. Then he contended that, the material presented by the applicant has established good cause which is a threshold for the granting of extension of time. He cited our decisions in **Kalunga & Company Advocates Ltd v. National Bank of Commerce Ltd** [2006] T.L.R. 235 and **The Attorney General v. Tanzania Ports Authority and Another**, Civil Application No. 87 of 2016 (unreported)

to reinforce his point. Further, he contended that the applicant had acted diligently, although he resided abroad. Since, he filed the futile application within time although it was struck out on a technical ground, hence the delay. For, all that time the applicant had been in the court corridors. The learned Counsel further asserted that the applicant's delay is technical thus, constitutes good cause. To fortify his point, Mr. Kessy cited **Abdallah Ibrahim Pazi** (as a Legal Representative of Laila Godfrey) **v. Amina Ally Yusufu And Six Others**, Civil Application No. 369/17 of 2018 (unreported).

Being prompted by the Court, Mr. Kessy stated that, the applicant's averments at paragraph 4 of the affidavit could only be proved by way of affidavits sworn by the said Sigismund, by any personnel of the alleged Imperial Attorneys and by Victor Kessy. Further, the learned Counsel admitted there being a delay of about forty-three days which the applicant did not account for.

Upon considering the parties' submissions and their pleadings, the pressing issue arising is whether the applicant has shown good cause for extension of time. It is trite law that, before the Court can exercise its

judicial discretion, there must be sufficient material presented by the applicant.

Rule 10 of the Rules which govern the filing of applications of this nature reads thus:

"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 expiration of that time and 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..."

(Emphasis added)

Nonetheless, I am aware that, what amounts to good cause has not been defined by our statutes. Rather, it could be seen from the material presented before the Court, along with some other factors, as we succinctly stated in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported).

The factors are:

- "(a) The applicant must account for all the period for delay;*
- (b) The delay should not be inordinate;*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged".*

Also, see- **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported).

However, I am satisfied that the applicant's averment in the supporting affidavit is a mere review of the record of application rather than being good cause for the Court to grant extension of time. Confronted with akin situation, the Single Justice of the Court in **Brazafric Enterprises Limited v. Kaderes Peasants Development (PLC)**, Civil Application No. 421/08 of 2021 (unreported) stated thus;

"...it is clear that the applicant has been in courts all along as she narrated. However, in the

*circumstances of the current application where for instance, **the applicant does not state why the appeal was not instituted immediately after obtaining leave, I find that narration of sequence of events alone does not constitute good cause for extension of time...***" (Emphasis added)

Applying the Court's proposition in **Brazafric Enterprises Limited** (supra) to the present application, with respect, I find that, the material presented by the applicants constitutes no good cause. It is thus, of no any assistance in the circumstances. I wish to stress that, fundamental as it is, the granting of extension of time for the doing of act, cannot be taken for granted or casually. Since, without a strict adherence to rule 10 of the Rules, the possibilities of the courts to entertain time-barred matters would not be ruled out. It is common knowledge that, to entertain time-barred matters is tantamount to bless a breeding ground for endless litigation. Much as time bar touches on the jurisdiction of the Court. See- our decision in **Said Mohamed Said v. Muhsin Amiri And Another**, Civil Appeal No.110 of 2020 (unreported).

Moreover, for the granting of an extension of time, the requirement has been that, the applicant has to account for each day, however slight the delay may be. For instance, in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) we stated that:

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

It is very unfortunate that, what is averred by the applicant at paragraph 4 of the supporting affidavit does not give an account of the delay of about forty-three days. Mr. Kessy has admitted this fact. These forty-three days are reckoned from 13th October, 2020, when the last futile application was struck out, and 27th November 2020 when the applicant lodged the present application.

However, I wish to say a word or two on the parties' concession, that, the application be granted whole sale. With respect, the parties may have so agreed each other just to suit their convenience, which counts nothing. It is compliance of the law that counts most. For, the

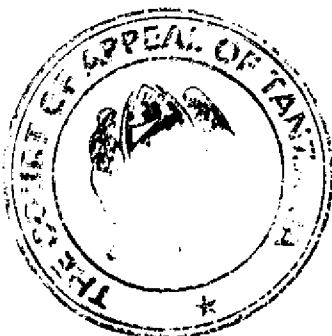
parties cannot extend time for themselves for the doing of an act. Just as it is trite law that parties do not confer jurisdiction to courts that lack it. See- our decisions in **Shyam Thanki And Others v. New Palace Hotel** [1971] 1 EA 199 and the **Tanzania Electric Supply Company Ltd v. Shaffi Ali Nuru** (as Legal representative of the Late Hassan A. Jambia) (Civil Appeal No. 2 of 2018) [2019] TZCA 84 (8 March 2019: TanzLII).

In conclusion, the application is unmerited and dismissed. I make no order for costs in the circumstances.

DATED at **DAR ES SALAAM** this 28th March, 2024.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 2nd day of April, 2024 in the presence of Mr. Victor Kessy, learned counsel for the Applicant also holding brief for 2nd, 3rd and 4th Respondents and in absence of the 1st Respondent, is hereby certified as a true copy of the original.



F. A. Mtaranja
F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL