

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 187/17 OF 2023

SAID SELEMANI MGOTO APPLICANT

VERSUS

RAMADHANI SHABANI NKUPE 1ST RESPONDENT

MAULIDI MPANDE 2ND RESPONDENT

(Application for extension of time to file an appeal out of time against the judgment of the High Court (Land Division) at Dar es Salaam)

(Masoud, J.)

dated the 2nd day of March, 2022

in

Misc. Land Appeal No. 94 of 2021

RULING

22nd & 29th April, 2024

MGEYEKWA, J.A.:

Before me is a Notice of Motion dated 15th March 2023 brought under Rules 10, 48(1), (2), and (4) of the Tanzania Court of Appeal Rules (the Rules). The applicant substantially seeks an order that an extension of time within which to file an appeal out of time be granted. The notice of motion is supported by an affidavit deposed by Said Selemani Mgoto, the applicant and written submissions dated 19th April, 2023. It has been opposed by the

1st and 2nd respondents' joint affidavit in reply deposed by Ramadhani Shabani Nkupe and Maulid Mpande, the respondents opposing the application on 3rd May, 2023.

Cumulatively, the applicant asserts that the applicant and the second respondent were parties at Mkuza Ward Tribunal in Case No. 30 of 2013. The trial tribunal decided the matter in favour of the applicant. Following that decision, the applicant proceeded to lodge an application for execution at the District Land and Housing Tribunal (DLHT). Having found that the applicant is processing the said execution, the 1st respondent successfully lodged a Land Application No. 77 of 2015 at the DLHT.

Still undaunted, the applicant unsuccessfully appealed to the High Court Land Division. The applicant requested a copy of the proceedings and a certificate of delay and on 27th June, 2022, he was supplied with the said copies. On 1st April, 2022 the applicant filed a notice of appeal before the Court. On 19th July, 2022, he successfully applied for leave to appeal to the Court. The applicant has raised two grounds, which he considered to be sufficient cause to extend the time to appeal to the Court, in the ninth paragraph of his affidavit, he asserted that the High Court granted leave to appeal, but it did not prescribe time within which to appeal and thus

erroneously treated as if he was time-barred to lodge an appeal. In the tenth paragraph of his affidavit, he has raised a ground of illegality. He claimed that the High Court in its decision erroneously blessed a fresh suit which was filed by the 1st respondent while he was supposed to file an application for a stay of execution.

At the application hearing, the applicant appeared in person while the respondents enjoyed the legal services of Mr. Jonas Kilimba, learned advocate.

When called to elaborate on the application, the applicant adopted the notice of motion, affidavit and the written submissions. In his written submission, he contended that on 26th June, 2022, he obtained a certificate of delay. On 7th December, 2020, he successfully obtained leave to file an appeal before the Court. He clarified that the life span of the certificate of delay ended when he was in the court's corridor. It is the applicant's further contention that he delayed to lodge an appeal in the Court because he was first required to obtain leave to appeal before filing the appeal.

On illegality, the applicant was insistent that the applicant's intended appeal to this Court raises substantial points of law and facts to be determined. The applicant's contention, as stated in paragraph 10 of the

supporting affidavit, is that the District Land and Housing Tribunal (DLHT) erroneously entertained a fresh case to the extent of giving judgment. He elaborated that the proper remedy for the respondent was to lodge a stay of execution and an application for objection proceedings in the same tribunal. As a result, the High Court fell in the same error by blessing the tribunal's decision.

On her part, Mr. Kilimba commenced his submissions by fully adopting the contents of the reply affidavit to form part of his oral submissions. From the outset, he strenuously opposed the application by arguing that the applicant has not given sufficient reasons for the delay. He argued that the impugned decision was delivered by Hon. Masoud (as he then was) on 2nd March, 2022, however, the applicant lodged the instant application on 22nd March, 2023 after a lapse of 92 days and the same are not accounted for.

Mr. Kilimba further contended that the applicant was not diligent in prosecuting his appeal. He clarified that the applicant has failed to show good cause of delay; instead, he is shifting the blame to the High Court for failure to specify a time limit when granting leave to appeal. Mr. Kilimba cited the case of **Lyamuya Construction v. Board of Registered Trustees**,

Civil Application No. 2 of 2010 in support of his assertion that a delay of ninety-two (92) days from the date when the applicant received the impugned decision to the date when he filed the instant application was inordinate.

Regarding the ground of illegality, Mr. Kilimba valiantly contended that the applicant has failed to pin point the point of law which can move the Court to grant his application. To reinforce his argument, Mr. Kilimba drew my attention to the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). He further contended that the termed illegality is not on the face of the record. As such, Mr. Kilimba urged me to dismiss the applicant's application without costs for lack of merit.

Rejoining, the applicant reiterated his earlier submission and impressed upon me to hold that the applicant has adduced sufficient cause to grant his application. He urged me to grant his application with costs.

I have carefully conserved the notice of motion, affidavits in support of the application, and in reply, counsel for the parties' submissions and cited authorities. In determining whether or not the applicant has shown good cause in terms of Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the

Rules) under which this application is preferred, a number of factors beyond the sole ground of illegality raised by the applicant herein has to be considered. The instant application is preferred under Rule 10 of the Rules which requires good cause to be shown for the Court to exercise its discretionary powers to extend time. Rule 10 of the Rules states:

"10. 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."

Pursuant to the above-cited rule 10 of the Rules, an application of this nature will only be allowed if an applicant has shown good cause to warrant the Court exercise its discretion judiciously to extend time. It is also settled law that an application for extension of time must be filed as soon as an applicant becomes aware of the need to do so and he is obliged to account for the delay for every day within the prescribed period. See, for instance, the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No.

3 of 2007 (unreported) and **Finca (T) Limited and Another v. Boniface Mwalukisa**, Civil Application No. 587/12 of 2018 [2019] TZCA (15 May 2019).

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. The principles that guide the court in the exercise of its mandate under rule 10 of the Rules is to show good cause and illegality is among them. See **Lyamuya Construction v. Board of Registered Trustees**, (supra) and **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein & 3 Others**, Civil Application No. 6 of 2016 [2016] (20 October 2016 TanzLII. In **Lyamuya Construction** (supra), the Court provided the following guidelines that may be considered in ascertaining whether there is a good cause:

- a) The applicant must account for all the period of 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 existence of a point of law for sufficient importance; such as the illegality of the decision sought to be challenged.

The applicant has urged me to find that his affidavit discloses that he was diligent in pursuing the matter, there was no inordinate delay and that the impugned decision is tainted with illegalities. The issue of consideration in determining this application is whether the applicant has submitted good cause for the delay to warrant grant of this application. I doing so, I turn to the affidavit and follow the sequence chronologically.

Starting with the period of delay, it is evident from the record that the impugned judgment was delivered on 2nd March, 2022. The leave to appeal to the Court was granted on 7th December, 2022. The application under consideration was filed on 22nd March, 2023 being of approximately 105 days which need explanation. The applicant has managed to account for the days of delay from 28th August, 2022 when he lodged an application for leave to 7th December, 2022 when he was granted leave to appeal. Also, the applicant managed to account for the delay of 21 days out of 95 days of delay. In paragraph 8 of his affidavit the applicant accounted the days of delay from

2nd March, 2023 to 16th March 2023. However, the applicant did not account for the days of delay from 17th December, 2022 when leave was granted to 2nd March, 2023 before he engaged his advocate. There is a total of 74 days which the applicant did not account for.

But there is also no explanation for the delay of the 7 days, between 16th March, 2023 when he obtained money to pay his advocate to 22nd March, 2023 the day the present application was filed. This in my reckoning, makes a total of 81 days unaccounted for, and I cannot ignore it. The applicant's diligence is therefore called in question. Therefore, I am in accord with Mr. Jonas that the delay is inordinate.

It is settled that an applicant seeking an extension of time is required to account for the delay of each day. In **George Mwende Muthoni v. Mama Day Nursery and Primary School, Nyeri** C.A No. 4 of 2014 (UR), extension of time was declined on-account of the applicant's failure to explain a delay of twenty (20) months. In **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007, (unreported) extension of time was declined on account of the applicant's failure to explain a delay of a

month and three days. In **Bushiri Hassan** (supra), the Court emphasized that:

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

From the above cited authorities, I am constrained to find out that, the applicant herein has completely failed to account for the delay of 82 days.

Next for consideration is the second ground on illegality, and the issue for determination is whether the impugned decisions of both lower courts are tainted with illegality. It has been held many times without a number where illegality exists and is pleaded as a ground; the same also constitutes a good cause for an extension of time. However, the alleged illegality must be on the face of the record. In **Lyamuya Construction** (supra), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows: -

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia's case, the Court meant to draw a general rule that every

applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

In the instant application, the illegality on the powers exercised by the DLHT. The applicant in paragraph 10 of his affidavit in support of the application complained that the DLHT erroneously entertained a fresh case while the respondent was required to lodge an application for stay of execution. He has also shifted the blame to the High Court for failure to reverse the impugned decision of the DLHT. Looking closely at the termed illegality, as rightly echoed by Mr. Kilimba, the same is not apparent on the face of the record; instead, it attracts a long-drawn argument. In **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) extension of time was declined on the ground that the termed illegality was not apparent on the face of the impugned decision.

Following the above findings, I am not persuaded that the applicant has advanced good cause to justify the grant of extension of time. The same does not fall within the meaning of good cause in terms of Rule 10 of the Rules.

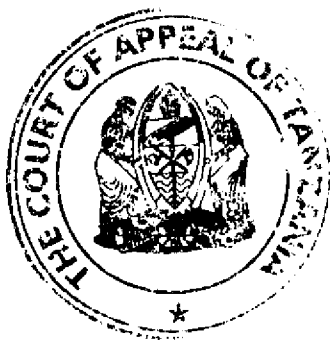
In the upshot, I hereby dismiss this application without costs.

It is ordered so.

DATED at DAR ES SALAAM this 29th day of April, 2024.

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Ruling delivered this 29th day of April, 2024 in the presence of the applicant in person unrepresented, Mr. Jonas Kilimba, learned counsel for the respondents and the respondents is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to be "A. L. Kalegeya", written over a horizontal line.

A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL