

**IN THE COURT OF APPEAL OF TANZANIA
AT MOSHI**

CIVIL APPLICATION NO. 803/05 OF 2021

JONES ELIKANNEY SHOOAPPLICANT

VERSUS

**AIKA AMY ANITA OMARI (As Administratrix
of the estates of the late Estomih Elikanenye Shoo)RESPONDENT**

**(Application for Extension of time to file Revision against the Ruling and
Order of the High Court of Tanzania at Moshi)**

(Simfukwe, J.)

dated the 12th day of August, 2022

in

Misc. Civil Application No. 2 of 2022

.....

RULING

10th & 13th June, 2024

MGONYA. J.A.:

By a notice of motion taken out under Rules 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant herein is seeking to move the Court to extend time for him to file an application for revision of the ruling and order in Misc. Civil Application No. 02 of 2022 before the High Court in Moshi.

The notice of motion lists down five grounds upon which the application is brought. For ease reference, I prefer to quote the said grounds as seen below:

- "1. This application for extension of time for revision out of time to the court on the point of law that the applicant was not granted right to be heard in Misc. Application No. 02 of 2022 delivered before the High Court of Tanzania at Moshi.*
- 2. This application for extension of time for revision out of time to the court on the point of law that this court to declare that the document alleged to be the letter of administration of the estate of the late Estomihi Elikenenyi Shoo granted by the High Court of Justice in the District Court Registry of Liverpool and resealed by the High Court if Tanzania be declared null and void."*

The application is supported by an affidavit of **Elia Johnson Kiwia** the applicant's advocate herein.

Briefly, the facts which led to this application can be traced way back in 2017 where the respondent herein sued the applicant herein in an Application No. 169 of 2017 at Moshi District Land and Housing Tribunal over the ownership of the suit land located in the Kindi village, Kindi Ward, within Hai District in Kilimanjaro Region.

In the cause of hearing, the applicant herein objected to the document granted to the respondent herein as Administratrix by the High Court of Justice, District Probate Registry at Liverpool, as letters of

administration to the Estate of the Late Estomih Elikenenyi Shoo who died interstate on 12th February 2009 at Wales, Liverpool in England, having a fixed place of abode and assets there. The objection was to the effect that the same does not qualify to be the letter of administration of the deceased's estate, even if it is said to have been granted by the above Commonwealth country. From the said objection, the matter at the District Land and Housing Tribunal was adjourned pending resealing of the said letters of administration by the respondent; the order which was duly issued on 7/12/2021 in the presence of both parties. Consequently, Vide Misc. Civil Application No. 02 of 2022 the order for resealing the letters of administration granted to the respondent herein by the High Court of Justice, District Probate Registry at Liverpool was granted and delivered by the High Court of Tanzania (Simfukwe J.).

It is after the said order, and upon the resume of the proceedings at the District Land and Housing Tribunal, the applicant is intending to revise the resealing proceedings and orders emanating therefrom for the reasons which have been advanced above. However, the applicant being out of the prescribed time to file revision to this Court, he has preferred the instant application for extension of time.

When the matter was called for hearing, Mr. Elia Johnson Kiwia, learned counsel appeared representing the applicant; whereas the

respondent in this application was duly represented by Mr. Martin Kilasara, the learned counsel. Both advocates have duly filed their respective written submissions for and against the application.

In his submission, Mr. Kiwia demonstrating the reason as to why the Court should consider his prayer for extension of time, the learned counsel averred that, the applicant herein was not aware of the resealing application before the High Court, and that as he had interest in the matter, of which was heard *ex parte*, then the applicant was denied his right to be heard. In his further submission, Mr. Kiwia adhered that, the applicant became aware of the ruling and resealed document alleged to be a letter of administration delivered by the High Court in application No. 02 of 2022 on 27th July 2023 and that it is on 25th August 2023, the applicant filed this application for extension of time. Mr. Kiwia submitted that, the applicant was ordinate in pursuing his intension to file revision.

Submitting further, it was the learned counsel's concern that in the said application, there were a number of illegalities and irregularities which deserves to be determined in the intended revision. And that out of the same, the Resealing Order by the High Court ought to be declared null and void.

Responding to the applicant's counsel submission, Mr. Kilasara informed the Court that, ther applicant's claim to be denied the right to

be heard at the High Court proceedings in Misc. Civil Application No. 02 of 2022 is baseless as the nature of the application before the High Court, was an *Ex parte* Application. In the event therefore, the applicant was not denied any right to be heard as he had neither locus nor forum in the application. Mr. Kilasara further was not in agreement that at the High Court;s proceedings in respect of the Resealing application, there were some illegalities and irregularities that had occurred for the applicant to file revision.

It is a well settled law that in granting the application for extension of time under Rule 10, the issue that has to be resolved is always, whether the applicant has shown good cause for extension of time. What a good cause is a question of fact, depending on the facts of each case. For that reason, many of the varied circumstances could constitute good cause in any particular case.

The law, that is, Rule 10 of the Tanzania Court of Appeal Rules, 2009, (the Rules) requires a party seeking for an extension of time to advance good cause for the Court to exercise its discretionary power to grant extension of time for doing any act authorized or required by the Rules. This position of the law was also reiterated by the Court in its numerous decisions, including the **Victoria Real Estate Development Limited v. Tanzania Investment Bank and 3 Others**, Civil

Application No. 225 of 2014 and **Manager, TAN ROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007; (both unreported).

The term "good cause" is not defined in the Rules. Nonetheless, the Court has stressed that in assessing whether there is "*good cause*" each case has to be considered on its own peculiar facts and circumstances and the court must always be guided by the rules of reason and justice, and not according to private opinion. This was stated in the cases of **Yusufu Same & Another v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported).

From the submissions above, the issue which stands for my deliberation is whether the applicant has advanced good cause to warrant the Court to exercise its discretionary power to extend time within which to file an application for revision.

In the present application, the applicant intends to file an application for revision against the decision of the High Court that was delivered on 12/8/2022. According to Rule 65 (4) of the Rules, an application for revision has to be lodged within sixty (60) days from the date of the decision.

I am fully aware with the settled position of the law that, a person

who was not a party in court proceedings has no right of appeal and the only remedy available for that party is to apply for revision - see: the case of **Ahmed Ally Salum v. Ritha Baswali and Another**, Civil Application No. 21 of 1999 (unreported). However, the major concern here is for the applicant to satisfy the Court on conditions set in grant of the extension of time.

One of the conditions is for the applicant to account for the days of the delay in filing the application within time. This material fact is missing in the applicant's affidavit in support of the application, in his written submissions and even in his oral submission before the Court.

In the present application, the applicant is intending to apply for revision against the Order of the High Court delivered on 12th August 2022. Pursuant to Rule 65 (4) of the Rules, an application for revision has to be lodged within sixty days from the date of the decision sought to be revised. This means that the applicant ought to have filed his application for revision on or before 12th November, 2022. Since he could not file it on time, he has now come to this Court seeking for an extension of time. From the records, the application for extension of time was filed on 25th August 2023, almost after a lapse of nine months counting from the last date he was supposed to lodge his application for revision. The ensuing question is, did the applicant managed to provide any good cause for that

delay of nine months to warrant this Court to exercise its discretion to extend the time to file an application for revision? Recalling from Mr. Kiwia's submission, he kept on insisting that the applicant was apt in filing the application since the applicant became aware of the Resealing Order on 27th July 2023. This is well explained in paragraph 8 of the applicant's affidavit. According to the law, the applicant was supposed to account the delayed days as from the date of decision and not as to when he became aware of the existence of the Resealing Order. It is for this explanation; the applicant has miserably failed to account the days as required by law.

Moreover, going through the parties' written submissions and their respective submissions before the Court, it came to my astonishment that both counsel focused their arguments to the intended revision and not in the subject matter of the application, being extension of time to file revision in respect of Application No. 2 of 2022 before the High Court.

To support what I have observed, I have deliberately reproduced the grounds upon which the applicant is seeking consideration of this Court for grant of his application for extension of time. As it can be observed, the applicant is relying on those grounds in seeking extension of time. Essentially, the applicant's counsel deposed that he could not file the application for revision within the prescribed time because he belatedly came aware of the Resealing Order that was issued by the High

Court in the applicant's absence. Hence the remedy open for him is to challenge the decision by way of revision. This being the reason as pointed out in the applicant's first ground of this application as quoted above.

On the other hand, Mr. Kiwia informed the Court that the intended revision contains some legal irregularities and illegalities, issue to be determined by this Court. In my considered view, this point has landed in this application prematurely and that the same does not fit to be one of the issues to be determined in this application for extension of time.

I am aware that, a claim of illegality or irregularity of an impugned decision has, all along constituted a good cause for extension of time under Rule 10 as it was stated in many of this Court's decision, one being **Principal Secretary Ministry of Defence and National Service v. Devram Valambhia** (1992) T.L.R. 185. However, this position has some legal development. In **Ngao Godwin Losero vs Julius Mwarabu**. Civil Application No. 10 of 2015 [2016] TZCA 2099 (18 October 2016) (Unreported) when determining as to whether the illegalities deserve to be a point of law in granting extension of time, quoting the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), it was concluded:

"Applying the foregoing statement of principle to the case at hand, I am not persuaded that the alleged illegality is clearly apparent on the face of the impugned decision. Certainly, it will take a long-drawn process to decipher from the impugned decision the alleged misdirections or non-directions on points of law. To that end, I must conclude that the applicant has not demonstrated any good cause that would entitle him extension of time."

As far as I am concerned, I fully subscribe with the above position that it is not every illegality deserves to be termed as a ground of which the extension of time can be granted.

Further, as I have demonstrated above, that both counsel intensively directed their submissions on revision at this early stage, my jurisdiction as a Single Justice in the application at hand is to ascertain whether the applicants have advanced good cause for the grant of an extension of time as I have no jurisdiction to examine and determine the substantive grounds for review. On this position, I am guided by this Court's decision in **Tanzania Portland Cement Company Limited v. Khadija Kuziwa**, Civil Application No. 437/01 of 2017 (unreported) where it was stated:

"...in application for extension of time, the Court is primarily concerned with ascertaining whether

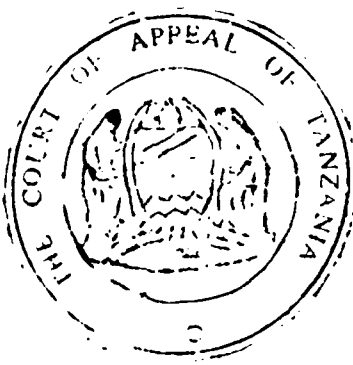
or not good cause has been shown to support a grant. The Court, more so, a Single Justice; may not venture so far as to speculate the merits of the desired application for revision before granting an extension of time."

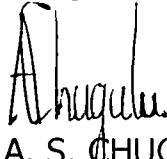
In view of the above, I find that the applicant has failed to advance reasons for the extension of time let alone good cause for the Court to exercise its discretion. Accordingly, the application is dismissed with costs for lacking merit.

DATED at **MOSHI** this 12th day of June, 2024.

L. E. MGONYA
JUSTICE OF APPEAL

The Ruling delivered on this 13th day of June, 2024 in the presence of the Mr. Martin Kilasara, learned counsel for Respondent also holding brief for Mr. Elia Johnson Kiwia, learned counsel for Applicant, is hereby certified as a true copy of the original.




A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL