

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL APPEAL NO. 117 OF 2017

**(Originating from the decision of the District Court of Ilala at
Samora in Miscellaneous Civil Application No. 373 of 2016)**

GETRIDA J. ILOMO.....APPELLANT

Versus

NAFLES JACKSON MBILINYI.....RESPONDENT

JUDGMENT

B.R. MUTUNGI, J:

Originally, in the Ilala District Court at Samora via Miscellaneous Civil Application No. 373 of 2016 the appellant herein unsuccessfully applied for extension of time to file an application for review of the consent decree entered between the parties herein. The appellant being dissatisfied with the said decision has come through the window of appeal to this court.

The appellant has raised three grounds as hereunder:-

1. *That the trial Magistrate erred both in law and fact for failure to evaluate and consider the reasons advanced by the appellant for extension of time which emanated from fraud, concealment and illegality committed by the respondent during execution of the consent decree.*
2. *That, the trial Magistrate erred in law and fact by failure to evaluate the strength of reasons for extension of time advanced by the appellant, thus misdirecting himself in holding that there was no reasonable ground for the delay.*
3. *That, the trial magistrate erred in law and fact by relying on irrelevant facts to conclude that the appellant adduced no sufficient reason to support the application for extension of time within which the appellant may file an application to review the consent settlement order.*

The brief facts leading to the appeal at hand as retrieved from the court record are that, The appellant intended to challenge the deed of settlement entered into with the respondent on 7/12/2012. From the alleged deed

of settlement, she was given plot No. 106 but was denied use of plot No. 105 which was within the same area and the same was not disclosed to her before signing. The building was among the matrimonial assets acquired during the subsistence of their marriage. They had built a hotel whilst plot No. 105 catered for the parking space, septic tanks, restaurant (kitchen) and a way bay. The appellant by consenting to the deed of settlement thought she was in possession of the buildings on these two plots, only to find she was cheated. Thus, the appellant had prayed the trial court grants the intended application so that, the said deed of settlement can be reviewed.

On the other side, basically the respondent clarified that the said two plots are different and have their different titles. He prayed the said application be dismissed.

The trial court in determining the said application was of the view that, the applicant had failed to advance

sufficient reasons in support of the application. The trial court was of a further view that, the appellant's delay was due to lack of diligence. The court found the said application had not been brought promptly. Consequently, the same was dismissed.

At the hearing of the appeal, Mr. Ngudungi learned Advocate appeared for the appellant while Mr. Ngalawa learned Advocate appeared for the respondent.

Mr. Ngudungi submitting in support of the appeal started by elaborating the brief facts which led to the appeal. He submitted the appellant was given plot No. 106 but she never knew if there existed another plot therein. He submitted further that, after a lapse of one year, the appellant was required to vacate from plot No. 105. Thus, proceedings at the District Land and Housing Tribunal were initiated by the respondent who was seeking for an eviction order. He submitted the matter was struck out for want of

jurisdiction. He further submitted there was filed Land Case in this court (Before Hon. Muruke, J.) on the same prayer but the same was struck out. Thereafter the appellant filed an application for extension of time to review the settlement order which was subsequently refused. Hence this appeal.

Regarding the first ground of appeal, he submitted the appellant was unaware of the fact that, on the said premises there existed two plots. He went further by submitting the appellant got knowledge of the said existence after being sued by the respondent to vacate the area hence it was not possible for her to have acted promptly as directed by the trial court. Mr. Ngudungi was of the view the appellant was misled by the respondent to believing that, she had been given the hotel together with the parking bay.

It was Mr. Ngudungi's prayer that the said deed of settlement be set aside on the ground it was tainted with

illegality. The reason being that, there were elements of concealment and fraud in the said agreement. He insisted the respondent should not benefit from the same and his arguments were backed up by the decisions in **CIVIL APPLICATION NO. 96 OF 2007 REGIONAL MANAGER TANROADS KAGERA VERSUS RUAHA CONCRETE COMPANY LIMITED** and **CIVIL APPEAL NO. 52 OF 2017 MARY KAHAM VERSUS HAM IMPORT**. He prayed the appeal be allowed.

On the other side of the coin, Mr. Ngalawa narrated the same historical background as did the counsel for the appellant. He went on to submit, the appellant was given the property after discussions and the appellant has already transferred it (Plot No. 106) in her name. In that regard the respondent had not concealed any fact. The learned counsel urged that, the appellant was duty bound to account for every day of her delay. He referred this court to the case of **Tanzania Coffee Board Versus Rombo Miller**

Limited, Civil Application No. 12 of 2015 and Commercial Case No. 213 of 2014 Amenila Constructions Limited Versus Nautilus Limited where in the latter case it was held failure of an advocate to check the law is not good reason since what matters is due diligence as well as the case of **Felix Tumbo Kisina Versus Tel Communication and Another [1991] T.L.R 57**. He further referred this court to the case of **Kalunga and Advocate Co. [2006] T.L.R 23**.

He prayed the appeal be dismissed with costs.

In rejoinder, Mr. Ngudungi insisted the respondent did not disclose all the properties for the division that was agreed upon. He further insisted the said deed of settlement was tainted with illegality. He prayed the appeal be allowed.

The issue here is whether the appeal has merits or otherwise.

Having considered the submissions on both sides, the core reason as depicted by this court for filing the appeal is that, the appellant alleges the respondent had concealed some of the properties purported to be acquired during the subsistence of their marriage in a discussion which led to the settlement deed. Further, that had the lower court considered this reason would have agreed with the appellant and extended time to have the said deed reviewed. Whereas the respondent denies the same on the ground that, the division of the said properties was arrived at in a free and transparent discussion which culminated into the deed of settlement dully signed by the two.

It is crystal clear from the court record the parties herein had entered into a deed of settlement on 7/12/2012. The appellant appears at the trial court on 6/10/2016 praying the court to extend time to enable her to file an application for review out of time against the said consented decree.

The major reason being that she was aware of the existence of the other plot after being sued for eviction from the plot in dispute, by then time had expired . The court record shows the appellant after receiving her portion subsequently transferred the same into her name but suddenly she surfaces as pointed above.

In view of the befalling events, it is obvious the appellant had taken over four (4) years to file the said application from the date when the deed of settlement was signed. The appellant did not account for the delay in those four years as the law requires.

IN THE OF TANZANIA BUREAU OF STANDARDS VERSUS ANITHA KAVEVA MARO, CIVIL APPLICATION NO. 60/18 OF 2017 (CAT-DSM) (UNREPORTED) at page 10 the Court of Appeal of Tanzania held;

*'...it is the firmly entrenched position of this court that **any applicant seeking extension of time***

is required to account for each day.’ [Emphasis is mine]

I am alive with the principle of law that, litigation should come to an end, thus the fact that the appellant was inactive for such a long period of time makes me believe she had no further interest against the said decree. Otherwise, the appellant was supposed to come up promptly if she still wished to challenge the said consented decree. This stance is supported by the decisions of the Court of Appeal of Tanzania in the cases of **GUARDIAN LIMITED AND ANOTHER VERSUS JUSTIN NYARI, CIVIL APPLICATION NO. 2 OF 2015 (CAT-AR) (UNREPORTED)** and **AKONAAY SIDAWA VERSUS LOHAY BARAN, CIVIL APPLICATION NO. 25 OF 2016 (CAT-AR) (UNREPORTED)** where it was held that;

‘it is trite law an application for an extension of time can only be allowed where the applicant has advanced sufficient reasons, which among

*them are whether or not an application has been **brought promptly**, the absence of any valid explanation for delay, lack of diligence on the part of the applicant renders the application incompetent.'*

The allegations raised by the appellant's counsel that there was fraud or concealment of the matrimonial properties are found to be mere speculations which in my settled mind cannot be considered as sufficient reasons for extension of time. What was required of the appellant was to assign good reasons for the delay more so where the delay was inordinate.

From the stated analysis and reasons, I find the appellant's move going before the trial court at such late hours was an afterthought. In the upshot, I find no sufficient reasons to fault the findings of the trial court in Miscellaneous Civil Application No.373 of 2016. Consequently, the appeal is hereby dismissed with no order

to costs because of the existed relationship between the parties herein.

It is so ordered.


B.R. MUTUNGI

JUDGE

19/4/2018

Right of Appeal Explained.


B.R. MUTUNGI

JUDGE

19/4/2018

Read this day of 19/4/2018 in the presence of Mr. Daffa for the appellant and Mr. Ngalawa for the respondent.


B.R. MUTUNGI

JUDGE

19/4/2018