

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL APPL NO. 108 OF 2017

KHALFAN YUSUFU SHAWAJIPLAINTIFF

VERSUS

SHARIFA JUMA SALEHERESPONDENT

15/11/2017 & 06/2/2018

RULING

KITUSI, J.

The applicant Khalfan Yusuf Shaweji is seeking extension of time under section 14(1) of the Law of Limitation Act cap 89, on the grounds of illness on his part and illegality in the decision intended to be impugned. The affidavit of the applicant filed in support of this application cites two instances of illegality, but those instances may only be appreciated if the background of the matter is first told.

It all started with Matrimonial Cause No 37 B of 2011 before Temeke District Court whose decision was successfully challenged in Civil Appeal No. 44 of 2014 before this Court.

In the said Civil Appeal, this Court (Mujulizi, J) ordered trial de novo but specifically directed the trial Court to address two issues namely;

- i. Whether there is any marriage between the parties worth dissolving.
- ii. Where the trial court had jurisdiction.

Now it is contended that the court's decision after this Court's order suffered from the following illegalities;

- (i) The court did not determine the question of jurisdiction first as it should have done.
- (ii) The court proceeded to determine the matter without hearing the parties, in the process granting reliefs that had not even been prayed for.

Those are the two illegalities being complained of

Shirifa Juma Salehe the respondent, filed a counter affidavit in which she disputed paragraphs 11, 12 and 13 of the affidavit of the applicant which are the cornerstones of the application. The respondent wants the applicant to prove the alleged illness and illegalities. By order of the court, hearing was by way of written submissions.

The applicant's submissions mainly rested on the aspect of illegality citing the case of **Veronica Fubile Vs NIC & Others**, Civil Application No. 168 of 2008 CAT (unreported) for the principle that illegality may be a good and sufficient cause to grant extension of time.

On the other hand the respondent submitted that the applicant is the one who had moved the trial court to order that the matter be disposed of by way of written submissions so he cannot be heard alleging that the applicant was not heard. She submitted that failure of an advocate to check the law is not sufficient ground

for allowing extension of time. The case of **Calico Textile Industries Limited V. Pyaralisemail Premji** [1983] TLR 28 (CA) was cited.

As regards the applicant's alleged illness the respondent submitted that there is no proof of that fact and mentioned the fact that he was entering appearance in another matter involving the two of them that at the same time was proceeding before a Land Tribunal.

In a short rejoinder the applicant submitted that the respondent concedes that the trial court did not take evidence of the parties before deciding the case.

The fact that the trial court reached its decision without hearing the parties, which is conceded to by them is an illegality and the issue as to who moved the court into making that error is not at the moment relevant. Based on the principle in the case of **Transport Equipment Limited V. D.P. Valambhia** [1992] T.L.R 91. cited in the case of **Veronical Fubile** (supra), I find merits in this application and grant it, with costs.

The intended application to be filed within 30 days of this order.



I.P. KITUSI

JUDGE

6/2/2018

Respondent : I am ready too.

Court : The ruling delivered on 6/02/2018 in presence of Mr. Mkali advocate for the applicant and respondent.



A.A.MAGUTU

DEPUTY REGISTRAR

6/02/2018