IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION NO. 23 OF 2017

(Originating from the decision of the High Court of Tanzania at the District Registry in Land Case No. 84 of 2015)

MSAFIRI SAID OMARI *(Holding Power of Attorney of Salma Estella Daudi Amri)* ---------- **APPLICANT**

VERSUS

JOHA SHAMTE MBEGA ---------- **RESPONDENT**

RULING

MUTUNGI, J.

The applicant having being aggrieved by the decision of this court in Land Case No. 84 of 2016 is seeking for the following orders against the same: -

1. *That, the Hon. Judge may be pleased to grant leave to file an application for leave to appeal to the Court of Appeal of Tanzania against the Judgment and Decree delivered on 28th November 2016 out of time.*

2. *That costs be in the course.*

3. *Any other orders as this court may deem fit and just to grant.*

The application is pursuant to section 11 (1) of the Appellate Jurisdiction Act [Cap. 141 R.E 2002]. It is further supported by an Affidavit affirmed by the applicant holding power of attorney of Salma Estella Daudi Amri.

The applicant in the affidavit states, the decision intended to be challenged was delivered on 28/11/2016 on a point of law in which the applicant was not afforded the right to be heard. He further alleged on 5/12/2016 was supplied with the said ruling, and he noticed it was referred to as a Civil Case instead of a Land Case. The applicant applied herein for the rectification of the said ruling and drawn order on 7/12/2016. He was subsequently served with the rectified ruling and drawn order on 15/2/2017. The applicant thereof found the time limit to apply for leave had already expired due to the reasons stated. He thus preferred the instant application.

In reply, the respondent in his sworn counter affidavit opposed the instant application. He basically challenged the reasons advanced by the applicant in support of the application at hand.

On 15/3/2018 when the application was called for hearing, Professor Binamungu and Mr. Mbuga learned Counsel appeared for the applicant and respondent respectively.

Professor Binamungu in his submission in chief submitted, the reason for the delay was due to their request of rectifying the said decision and its drawn order as per paragraphs 5, 6 and 7 of the corresponding Affidavit. For the sake of clarity, the said paragraphs state as hereunder;

> 5. *That, notice of appeal and letters of seeking for ruling and drawn order when written, filed and served on the respondent on 7th December, 2016. Copies of ruling, notice of appeal and letters are collectively annexed hereto to form part of this affidavit.*

6. *That, a request for rectification of the ruling and drawn order was also written and filed on 7th December, 2016.*

7. *That, a rectified order was served upon us on 15th February, 2017. We are yet to be furnished with a rectified ruling.*

He thus prayed the application be granted.

Mr. Mbuga in his reply submitted the reasons advanced by the applicant's Counsel have no merits. He argued that attachment of the orders, is not a requirement of law. He referred this court to the case of **EXECUTIVE SECRETARY WAKIF AND TRUST COMMISSIONER VERSUS SUDI SALIMU ABALU [2001] T.L.R 160** and **DR. MENGI AND OTHERS VERSUS MUGANYIZI RUTAGABWA, CONSOLIDATED MISCELLANEOUS APPLICATION NO. 198 OF 2016**.

Mr. Mbuga went further by submitting even if the applicant is alleging the rectification procedure had led to the delay, but the applicant has failed to account for each day's delay. He further explained that the alleged rectified documents were supplied to the applicant on 15/02/2017

whilst the application was filed on 7/3/2017 hence there are almost 16 days not accounted for. He cited the case of **TANZANIA COFFEE BOARD VERSUS ROMBO MILLERS LTD, CIVIL APPLICATION NO. 13 OF 2015 (CAT-AR) (Unreported)** to support his stance.

Mr. Mbuga went further by challenging the applicant's power of attorney. He was of the view the applicant has no locus standi herein because the mere reason that Salma Estella Daudi Amri will soon depart to USA was not sufficient as there was no proof on that account. He invited the court to the case of **MISS. MARIAM E. CHIMBALA VERSUS THE VICE CHANCELLOR IMTU PROF. JOSEPH SHIJA AND OTHERS, MISCELLANEOUS CIVIL CAUSE NO. 82 OF 2008 (HIGH COURT OF TANZANIA AT DAR ES SALAAM) (Unreported).**

He concluded by arguing, the applicant has failed to advance sufficient reasons. He prayed the court finds the reason for the delay was due to the negligence on the part of the applicant. Mr. Mbuga referred the court to the case of **DIRECTOR GENERAL PCCB VERSUS FRANK IPYANA LABOUR**

Mr. Mbuga in his concluding remark prayed the application be dismissed with costs.

Professor Binamungu in his rejoinder insisted it was necessary for them to attach the said orders in order to demonstrate the errors therein. He further submitted, the argument whether the power of attorney is proper or otherwise before the court is irrelevant herein.

He went on to submit, the intended decision to be challenged was delivered on 28/11/2016, the 14 days period had expired on 12/12/2016. Thus, according to him during this time the applicant had filed a notice of appeal and requested to be supplied with the necessary documents. He maintained that, had they filed the application with unrectified documents, this would have been castrophic. He insisted there was no negligence on the way the applicant had handled the matter, thus he prayed the application be granted.

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

It is trite law that the applicant has to advance sufficient reasons in respect of any delay. The law is well settled as to what amounts to a sufficient cause. In the case of **THE REGISTERED TRUSTEES OF THE ARCHDIOCESE OF DAR ES SALAAM VERSUS THE CHAIRMAN OF BUNJU VILLAGE GOVERNMENT AND 11 OTHERS, CIVIL APPEAL NO. 147 OF 2006 (CAT-DSM) (UNREPORTED)** at page 7 the Court of Appeal of Tanzania held;

> *"Though the court should no doubt give all liberal interpretation to the words **"sufficient cause"**, its interpretation must be in accordance with judicial principles. If the applicant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of justice and hardship to the applicant".*

The question now is whether the applicant herein has advanced sufficient reasons for the delay. I have gone through the entire court record and the submissions from both camps, I find the applicant has failed to advance sufficient reasons in support of the instant application.

The applicant appears on record to have requested to be supplied with the copy of the decision and its decree on 6/12/2016. Further, the applicant is seen to have written a letter for rectification of the said decision on the same date. The applicant has thus failed to prove his allegation in terms with **section 110 (1) of the Evidence Act [Cap. 6 R.E 2002]**.

For the avoidance of doubts, **section 110 (1) of the Evidence Act [Cap. 6 R.E 2002]** states as follows;

> *"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".*

The above legal position has also been emphasized in the case of **ABDUL-KARIM HAJI VERSUS RAYMOND NCHIMBI**

ALOIS AND ANOTHER, CIVIL APPEAL NO. 99 OF 2004 (CAT-ZNZ) (UNREPORTED) at page 7 the Court of Appeal of Tanzania held;

> *"It is an elementary principle that he who alleges is the one responsible to prove his allegations".*

The foregoing notwithstanding, the court record reveals the decision intended to be challenged was delivered on 28/11/2016 the drawn order was duly extracted on 14/2/2017 and the instant application was filed herein on 7/3/2017 as per the chamber summons. Be as it may, from 14/2/2017 when the said drawn order was extracted to 7/3/2017 when the application was filed herein as pointed above the applicant has failed to account for the delay of about nineteen days from the extracted date to the filing date of the application.

For that reason, I agree with Mr. Mbuga's position that each day delayed must be accounted for. The applicant has failed to account for the said delay. The same was amplified in the case of **VODACOM FOUNDATION VERSUS COMMISSIONER GENERAL (TRA), CIVIL APPLICATION NO. 107/**

20 OF 2017 (CAT-DSM) (UNREPORTED) at pages 9 and 10, the Court of Appeal of Tanzania held;

> *"...Delay even* ***a single day, has to be accounted*** *for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken...****Those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence"****. [Emphasis is mine]*

In a similar vein, in the case of **TANZANIA BUREAU OF STANDARDS VERSUS ANITHA KAVEVA MARO, CIVIL APPLICATION NO. 60/18 OF 2017 (CAT-DSM) (UNREPORTED)** at page 10 the Court held;

> *"There was evidently a period of about forty days of inaction. I am mindful that it is the firmly entrenched position of this court that any applicant seeking extension of time is required to account for each day of delay".*

From the above stated reasons, I find the applicant has failed to advance sufficient reasons as required by the law. In the event, I pen off here instead of determining other factors

which include whether the attachment of the order was required by the law, as well as the issue of locus standi of the applicant as suggested by the respondent's counsel.

Having said so, I hereby dismiss the instant application with costs. It is so ordered.

B. R. Mutungi

JUDGE

30/04/2018

Right of appeal explained.

B. R. Mutungi

JUDGE

30/04/2018

Read this day of 30/04/2018 in presence of Dickson Sanga for the respondent and holding brief for Mr. Jackson for the applicant.

B. R. Mutungi

JUDGE

30/04/2018