

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

MISC. LAND CASE APPL. No. 26 OF 2017

SITAL SINGH.....APPLICANT

Versus

HENRY OWANGE.....RESPONDENT

RULING

19/07/- 8/10/2019

J. A. DE-MELLO, J;

Brought under **Section 14 (1)** of the **Law of Limitation Act Cap. 89**

R.E 2002 for the following orders:-

- 1. That, this Honourable Court be pleased to grant the Applicant Extension of Time to file Appeal against decision of the District Court of Temeke in Civil Case No. 47 of 2003.**
- 2. Any other Order the Honorable Court deems proper to grant.**

The Application is supported by the sworn Affidavit of **Julius Kalolo Bundala** from **M. A. Ismail & Co. Advocates**, for the **Applicant** whereas; **Levina Kagashe** fends for the **Respondent**.

With the Leave of the Court, this Application was disposed off by way of written submissions, with all on board and grateful for their compliance.

In supporting the said Application, **Counsel Kalolo** narrated a brief background of the dispute arising from alleged **wrongful eviction** against the **Respondent**, claiming compensation of **TShs. 62,617,500/- and TShs. 200,000,000/=** as special and general damages against his client the Plaintiff. Successful he was, as the Applicant dissatisfied and, knocked the **High Court** doors before **Hon. Makaramba** in **Civil Appeal No. 206** of **2006** quashing and, set aside the judgment and, decree declaring the Court to have no jurisdiction it being a landed dispute. That was on the **17th of September 2008**. The Respondent lodged Appeal at the Court of Appeal which **Struck Out** the Appeal being accompanied with a defective Decree depicting a different date from that of judgment. Further that, efforts to remedy the error took a while, until when in **December 2018**, the Applicant was served with Execution Application accompanied with a correct version. **Paragraph 7** of Counsel Affidavit connotes the novel issue of jurisdiction that if not addressed by the Superior Court will occasion injustice. In his written submissions, and, apportioning the blame to the Trial Court for issuing a Defective Decree and which was not forthcoming, **Counsel Kalolo** in support of several cases of **Abdallah Salanga & 63 Others vs. Tanzania Harbours Authority, Civil Application No. 4 of**

2001, (CA) (Unreported), Tanga Cement Company Ltd vs. Jumanne D. Masangwa & Amos A. Mwalandwa, Civil Application No. 6 of 2001, expounding on what constitutes sufficient cause. As for fault on the part of the Court, taking long for correcting it is the case of **Tanzania Sewing Machines Company Ltd vs. Njake Enterprises Ltd., Civil Application No. 56 of 2007**, causing a technical delay he referred the case of **Fortunatus Marsha vs. William Shija & Another [1997] TLR 154** in which the case of **Emmanuel R. Maira vs. District Executive Director Bunda District Council, Civil Application No. 66 of 2010** with a view of demarcating a distinction between real or actual delays. With regard to illegality, the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambia, VIP Engineering & Marketing Ltd., TRA & Liquidator Tri-Telecommunication (T) Ltd vs. Citibank Ltd. Consolidated Civil Reference No. 6, 7, & 8 of 2008, Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of YWCA, Civil Application No. 2 of 2010** and adopted by **Hon. Ndika J**; this recent in the case of **Tumsifu Kimaro (Administrator of Estate of the late Eliamini Kimaro) vs. Mohamed Mshindo, Civil Application No. 28/17/2017** and

Jehangar Aziz Abdulrasul vs. Balozi Ibrahim Abubakar & Another,
Civil Application No. 79 of 2016, reiterating with emphasis the Court's duty even it means extending time for purpose of ascertaining the point and take appropriate measures. Counsel humbly submitted for the Application to be allowed as prayed.

Opposing while noting the two reasons that, of delays from the Trial Court and tainted illegality to be insufficient. Two he computed from **9th of March 2017** up to **15th of January 2019** is unexplainable, two solid years, with no other explanation than negligence on the part of Counsel. Counsel suggests that it would have been convincing if steps taken through out could be substantiated by evidence say even Affidavits and letters from the source. Apportioning the blame to the Court and without proof considering that following amendment in November 2006 availed the Respondent to file for Execution. He disregarded the cases of **Abdallah, Tanga Cement (supra)** that required prompt and diligence of the part of Counsel. Moreover, even the other remain case have no basis so long as no proof has been advanced of how diligent and steps to follow have been embraced. By large Counsel point out that not accounting for each day of delay translates to no proof but largely negligence. This is very pertinent as

he shared the case of **Wambele Mtumwa Shahame vs. Mohamed Hamis, Civil Reference No. 8 of 2016**, demanding proof that the delay had not been contributed by Advocate. All in fine in the event the Court grants it is the Respondent one to suffer who has been in the waiting for that long. The Applicant sat on his right until when the Application for Execution came into play. Nothing cogent has been advanced to move the Court to consider, he humbly concluded praying for dismissal with cost.

I however could not trace any Counter Affidavit by the Respondent but on record is his written submissions towards the Application.

It is trite law that, an application for **Extension of Time** is entirely in the discretion of the Court to grant or refuse it, and that, extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

The main reason adduced by Counsel for the Applicant for the delay is the defective decree which was not forthcoming soon after the matter was declared a landed one which the Trial Court had no jurisdiction to entertain as a Civil Court.

It is even evidenced that it has taken two years from... to when this Application was lodged, horribly unexplainable. As further observed, nothing towards the process for calling for correction or any other supporting letter or Affidavit in support of the efforts on the part of the Applicant has been shared. Long as it appears neither is accounting for each day of delay.

In the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another, Civil Application No. 278/15 of 2016** (unreported) the Court of Appeal held that; I quote;

"...any applicant seeking extension of time is required to account for each day of delay."

See also the case of **Oceanic Bay Hotel vs. Real Insurances Tanzania Ltd [2013] EARL 214.**

It is my view that there is no justifiable reason advanced by the Applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to file an appeal out of time, other than the illegality which I find critical.

It is for this only reason and solely for interest of justice that I grant the Applicant his prayers for extending time to file Appeal to Court of Appeal. Let the same be filed within seven (7) days from the date of this order.

It is so ordered.


J. A. DE-MELLO

JUDGE

08/10/2019