

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

MISC. CIVIL APPLICATION No. 487 OF 2019

TAMOBAS SECURITY FORCE LIMITED1st APPLICANT

JOSEPH EVARIST KIMISHA.....2nd APPLICANT

VERSUS

MAPANGA USED VEHICLE LIMITED.....1st RESPONDENT

ALEX MAPANGA2nd RESPONDENT

ADAM AMANI MARO.....3rd RESPONDENT

RULING

20th February, 7th April, 12th May, 2020

J. A. DE-MELLO J;

Before me is an Application made under **section 14(1)** of the **Law of Limitation Act, Cap. 89 R.E 2002**, seeking to an order for extend time to appeal to this Court against the decision of the **Ilala District Court** in the **Civil Case No. 111 of 2016 of 7th December, 2017**. The Application is supported by the joint Affidavit of **Joseph Evarist Kimisha**, the **2nd Applicant**, as well as the Principle Officer of the **1st Applicant**, and, that of **Frank Chundu**, Counsel for the Applicants. The **1st Respondent** jointly with ~~the~~ **2nd Respondent** and, one **Asia**

Tokutoola Counsel for the **3rd Respondent** herein filed their Counter Affidavits strongly opposing this Application.

The genesis of this matter has amply been explained from the Applicant's Affidavit that of from the decision of the **Ilala District Court** in **Civil Case No. 111 of 2017**, delivered on **7th day December 2017**. That, he filled an Appeal on time via **Civil Appeal No. 55 of 2018** which was truck out for on the **12th August 2018** for want of certified copy of decree on **5th October, 2018** applied for the certified copies of the Judgment and, Decree which were obtained in **10th September, 2019**.

Hearing was conducted orally, whereby the Applicants were represented by **Frank Chundu** learned Advocate, while the **1st** and **2nd Respondents** enjoyed the Services of Counsel **Dickson Ngowi**, as for the **3rd Respondent** was represented by **Asia Tokutoola**.

Counsel for the Applicant adopted his Affidavit together with that, of the **2nd Respondent** in support of the Application while making his submission. But, all he wanted to address this Court is he and, his client have neither been negligent at all, in the delay nor did they play a delay tactics, as the delay was caused by the Trial Court delay to supply the certified documents for Appeal purposes as well as time spent prosecuting **Civil Appeal No. 55 of 2018**. He further added that, the decision intended to be challenged is tainted with some irregularities like **illegal transactions of the Contract**, therefore intervention of this court is required.

Counsel for the **1st** and, **2nd** respondents strenuously resisted the application by adopting **Counter Affidavit** of the **2nd** and, submitting that the Applicant has not brought to the fore, sufficient reasons to

deserve the grant of the order for extension of time. Further that the powers to grant this application or not, is the discretion of the court and the criteria for grant are enumerated in the case of **Lyamuya Construction vs. WCA, Civil Application No. 2 of 2010 (unreported)** as quoted in the case of **Ngao Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015** which requires the Applicant to account for the delay, inordinate one, diligently, as opposed to partly and, priority of the law. He criticized the applicants affidavit that does not meet the needs in **Lyamuya's case** in 1st not accounting for **55** delayed days from **12th August, 2018** to **5th October, 2018**. He cited the cases of **Bushiri Hassani vs. Latifa Mashagi, Civil Case no 3 of 2007** and **Finca (T) Ltd Vs Bonifasi Mwalukisa Civil Application No. 589 of 2018(unreported)** which all provides that, each single delayed day should be accounted for. He insisted that, the delay is inordinate. And second, is for not accounting for the **three hundred forty two days (342)** from **5th October, 2018** to **13th September ,2019**. That, the reasons for delay given in **paragraph 7** of the **2nd Applicant** affidavit are mere allegations and, are unsupported. He never even exhibited diligence to remind the trial Court to give them the certified copies as was emphasized in the case of **NBC vs. Sadnurdin Magingi [1998] TLR** at page **533**. Also in the case of **Ramadhani J. K vs. Azara, Civil Application No. 401 of 2018**. That, the Applicant has not complied with the requiring of the above cases. With regard to illegality he averred that, is unfound in the face of record, neither in the jurisdiction of the court nor in the Rule of **Natural Justice**. He concluded that for interest of justice the Applicant was demanded to comply with the principles pointed in the case of **Lyamuya's** (supra)

Counsel for the **3rd Respondent** adopted her Affidavit among others submitted that, in line with that, of Counsel for the **1st** and **2nd** Respondent insisting that, the reasons given by the Applicant are still wanting for this Application to be granted. Rejoining counsel for the Applicant submitted that, the **fifty five 55** delayed days was awaiting for new instruction from the Applicants. From the **10/9/2018** to **13/9/2019** he was waiting for the certified copies of from the Trial Court.

I'm very grateful for the intensive and, impressive researched arguments conducted by the Counsel for the **1st** and, **2nd** Respondents as indeed they lead to the ultimately cemented findings of this Court. Having gone through the submissions from both Parties ,it is a 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 **delays was with the sufficient/good cause**. In the instant application the, the reason for the delay by the Counsel for the Applicant was the failure of the Trial Court to timely grant the Applicants with the certified copies of the Judgment and, the Decree, and, prosecuting **Civil Appeal No. 55 of 2018** which was **Struck Out** on **12th August,2018** . The question now before this Court is whether the reasons advanced **amounts to good cause**. The law does not define what amounts to good cause. However, in the case of **Regional Manager, Tanroads Kagera vs. RUAHA Concrete Company Ltd. Civil Application No. 90F 2007** (Unreported) it was held that;

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determinedly reference to all the

circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

Looking at the matter at hand, I can safely say that, the Applicants has not advanced good cause for his delayed by referring to the numbers of days taken by the Applicant from the date the **Civil Appeal No. 55 of 2018** was **Struck Out** on **12th September, 2018** to the date when they applied for the copies of impugned decision that, is the **5th October 2018**. Evidently, the fifty **five (55)** days have not been accounted for by the Applicants. In the case of **Zaidi Baraka & Others Exim Bank (T) Ltd. Miscellaneous Commercial Case No. 300 of 2015**, the Court of Appeal of Tanzania cited with approval the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania, (supra)** cited by the Counsel for the Applicant above, in which the Court held;

"...the Court's discretion has to be exercised judiciously by considering all the circumstances of the case, and if the applicant had acted prudently and without delay in lodging the application"

In **Lyamuya case** cited above, the Court stated that;

"As a matter of general principle, it is a discretion of the Court to grant extension of time. But that discretion is judicial, and so must be exercised according to the rules of reason and justice and not private opinion or arbitrary"

In this same case, the Court of Appeal insisted that, **the applicant must show diligence and not apathy, negligence, or, sloppiness in the**

prosecution of the action he intends to take. Spinning on the views of the above holding and, referring to the reasons advanced by the Applicant's Counsel while rejoining, that of **waiting to be instructed** , to pray for extension of time, and taking Note that the same Applicant has not evidenced their due diligence since they applied for the copies of the impugned decision, on **5th October, 2018** to the date of filling this application on **13th September, 2019**, verifies that, both of them **were not prudent** but, **negligent**, and, with **laxity**.

For the foregoing reasons, I find and, hold that, the Applicant has not explained in any way **every day of delay** to warrant the Court exercise its discretion to grant the enlargement sought as observed in a litany of cases like those cited by Counsel for the Respondent. From the face of the records, it is hard to even see the illegality (if any) claimed by the counsel for the Applicant to press hard for grant, like lack of court jurisdiction, or non-adherence to the rules of **Natural Justice**. In the case of **Principal Secretary, Ministry of Defence and National Service V Devram Valambia [1999] TLR 182**, the illegality which was discussed related to the Applicant being denied an **opportunity to be heard** contrary to rules of **Natural Justice**.

And in **Lyamuya** case (supra) the Court of Appeal sternly observed that; **"Since every party intended to appeal seeks to challenge a decision of either on point of law or facts, it cannot in my view, be said that in VLAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises point of law should as of right be granted extension of time if he applies for one. The Court there**

emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on face the record, not one that would be discovered by a long drawn argument or process” (emphasis is mine)

Applying the above principles, I have not been persuaded by what is before me not even on the alleged illegality to lead me to find that it is apparent in the face of the record and, that can be discerned as good cause for Court to grant the prayers sought in this Application.

From the above findings, I must conclude that, this Application has no merit, as I dismiss the same with costs.

I so order.



J. A. DE-MELLO

JUDGE

7/5/2020