

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

**MISC. LAND APPLICATION No. 52 OF 2019
(Arising from land case No. 32 of 2013)**

TITO PATRICK SANGAAPPELLANT

Versus

**ESMAIL YARU MOHAMED.....1st RESPONDENT
ERICK AUCTION MART.....2nd RESPONDENT
ASIA DISMAS CHALE.....3rd RESPONDENT
FADHIL JUMA.....4th RESPONDENT**

RULING

23rd April, - 12th May, 2020

J. A. DE - MELLO J;

On the **18th, August, 2017**, this Court and before **Hon. Mruke J;** did enter Judgment and, Decree in favour of the Respondents. The Applicant is aggrieved and, has lodged this Application for an **Extension of Time** within which to lodge a **Notice of Appeal**. The Court is moved under **section 11 (1)** of the **Appellate Jurisdiction Act, Cap. 141** and, supported by an Affidavit of **Tito Patrick Sanga**, filed on **23rd day of August, 2019**. Having been duly served, **1st Respondent** has filed his Counter Affidavit on **12th September, 2019**, **2nd, 3rd**, but missing the **4th Respondent's**.

In his submission, and based on the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** that, the decision to be appealed is tainted with illegalities worth considering by the Court of Appeal of Tanzania to wit;

- a) **That, the Court had no jurisdiction to adjudicate the suit which was filed beyond the prescribed statutory time limit, as it is a dispute arising from complaint or the resistance or obstruction to the delivery possession of the suit premises sold in execution of decree.**
- b) **That, the decision of the Court is illegal as the Court had no jurisdiction to entertain and determine the land dispute of TShs. 30,000,000/= whose value was below its statutory jurisdiction of the High Court.**
- c) **That, the trial court erred in law by allowing the 4th respondent to gain from his own wrong after selling the suit premises to two different persons and after finding this gross misconduct of the 4th respondent the Court ordered the appellant to refund the 1st respondent TShs. 30,000,000/=.**

In a nutshell and jurisdiction being at stake, the decision then tainted, an illegality to draw sufficient cause, for this Court to exercise its discretion to consider and grant. To support this contention the case of **Kalunga and Company Advocates vs. National Bank of Commerce Limited [2006] T.L.R 235** cementing further from what the case of **The Principal Secretary, Ministry of Defence and National Service vs. Devram**

Valambia (1991) TLR 389. Other than the illegality, is the Applicant's claim that, he has been in and out of the Court in search for justice and there is a good cause for delay and, cited the case of **Arunaben Chaggan Mistry vs. Naushad Mohamed Hussein and 3 Others, Civil Application No. 6 of 2016 Court of Appeal of Tanzania at Arusha** (unreported) which made reference on the case of **Henry Leornad Maeda and Another vs. Ms. John Anaeli Mongi and Another, Civil Application No. 31 of 2013 (unreported)**. He further averred that, he was acting prudently since then from the **31st August, 2017** to the **9th August, 2019** though he alleges to diligently missed correct steps in quest to secure the right course, ending up in such delay.

In rebuttal, the Respondent and quite briefly observed failure of the Applicant to account for each day of delay, while disregarding ignorance to amount to good cause, instead he considered the Application as a delaying tactic. On the point of jurisdiction and considering the fact that, the property was sold in public auction, it attracted more than its value of **TShs. 30,000,000/=**. The case of Said **Ramadhani Mnyanga vs. Abdallah Salehe [1996] TLR 74** was referred stating that,

"For leave to appeal to be granted, application must demonstrate that, there are serious and contentious issues of law or fact fit for consideration of appeal".

From the above, he find nothing contentious fit for worse even following unexplained lapse of almost three years since **18th of August 2017** until when this Application is lodged ~~and for~~ extending time for Notice alone.

I find nothing magic from this Application other than the usual and similar guidelines that are settled for extending time. I am even live and mindful of the discretion bestowed on me but with a caution of acting judiciously. I'm even approving all the cases cited highlighting the prescribed guidelines as the case of **Lyamuya Construction Company Ltd (supra)** set and wish to refresh:

"(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

The Principal Secretary Ministry of Defence and National Service vs. Devram Valambia [1991] TLR 387, held that:- "In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight."

It is the three years delay that this Court is interested with other than the illegality or otherwise and which no mandate lies within but the Court of Appeal. Notwithstanding the background on which this Application has **Matrimonial Cause Number 9 of 2002 of Ilala District Court**, nothing cogent has been demonstrated to exhibit the reason for the delay. I even find, as I share the Respondent's view that; **"going in and out of the Court"** which translates to ignorance, is just lame.

My keen perusal from the file, finds out that, the **Notice of Appeal** was filed on **30th August, 2017**, drawn and, addressed for service by **M.M YUDAS LAW ASSOCIATES**. Again it is **Edward Peter Chuwa**, Advocate, who drew the **Notice of Withdrawal** of that, **Notice of Appeal**. These two, I should admit are competent practitioners as seen **annextures A3, A4 and A5** of the Applicants Affidavit. In the case of **Tumsifu Elia Sawe vs. Tommy Spades Limited, Civil Case No. 362 of 1996** (Unreported - H.C) the Court that held,

"Failure of party's advocate to check the law is not sufficient grounds for allowing an appeal out of time."

The above position manifested in the case of **Umoja Garage vs. National Bank of Commerce [1997] T.L.R 9** where it was held that:-

"It seems plain to me that in the instant case lack of diligence on the part of Counsel, or an oversight as Mr. Lukwaro calls it, would be even more devoid of merit as a plea for extension of time"

In Transport Equipment Ltd vs. DP Valambhia [1993] T.L.R91 where it was held that,

"What is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time."

I must conclude that the applicant has not demonstrated any good cause that would entitle him extension of time, worse more for a Notice of Appeal, three years late since the judgment of **18th August 2017**.

In the result, this Application fails and is, accordingly, dismissed with costs.

It is so ordered.


J. A. DE-MELLO

JUDGE

12th May, 2020