

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

MISC. CIVIL APPLICATION NO. 770 OF 2016

(Arising from the decision of the District Court of Kinondoni in Civil Case No. 199 of 2000 dated 30/09/2004 before Hon. Mbuya SRM)

JOHN RUMISHAEL MAEDA and EUGENIA JOHN

**MAEDA (Administrator and Administratrix of the
estate of the late WILLIAM MAEDA)..... APPLICANTS**

VERSUS

**ADMINISTRATOR GENERAL (Administratrix of the
Estate of the deceased NKIPATA SANDUBE) RESPONDENT**

RULING

14th May & 22nd May, 2020.

E. E. KAKOLAKI J

This is an application by the applicants for extension of time within which to appeal to this court against the decision of District Court of Kinondoni dated 30/09/2004 in Civil Case No. 199 of 2000 filed on 08/11/2016. The application has been preferred at the instance of the **Brotherhood Attorney** under section 14(1) of the Law of Limitation

Act [Cap. 29 R.E 2002] and sections 93 and 95 of the Civil Procedure Code [Cap. 33 R.E 2002], supported by the joint affidavit of **John Rumishael Maeda** and **Eugenia John Maeda** *Administrator and Administratrix of the estate of the late William Maeda*, the applicants. The respondent who is the Executrix of the late **Nkipata Sandube** on its side through the counter affidavit sworn by **Samwel Cosmas Mutabazi**, State Attorney, vehemently opposed the application.

Both parties in this matter are represented. The applicants are represented by Mr. Methuselah Boaz Mafwele, learned advocate whereas the respondent is represented by Edna Elvis Kamara, Senior State Attorney. By consent parties agreed that the matter be disposed by way of written submission and a filing schedule was issued and followed accordingly except that the applicants dispensed with filing the rejoinder submission as they filed it out of time on 18/05/2020. The filing schedule was that, applicants were to file their submission in chief by 17/04/2020, respondent's reply to the applicants' submission 04/05/2020 and rejoinder submission by 11/05/2020. The matter was mentioned on 14/05/2020 for setting a judgment date. However on the mention date applicants did not bother to seek extension of time to file the rejoinder submissions, I will therefore refrain from consider it in this ruling. It is also incumbent for me to tell at this juncture that before me this matter was presided over by my sister Hon. Dr. A. Ngwala J before she was transferred to another duty station. As a result of her transfer the matter was re-assigned to me to proceed with. In between before my takeover both parties passed away thus the matter had to be prosecuted and defended by administrators and administratrix of estates as it can be seen from the title of the case. The court upon being

satisfied of their *locus standi* ordered for amendment of chamber summons on 17/10/2018 and 05/12/2019 respectively to include them.

The background story that gave rise to this application can be briefly told as follows. Before the District Court of Kinondoni (Resident Magistrate Court of Kivukoni at Kinondoni) in Civil Case No. 199 of 2000 the applicant late William Maeda (deceased) unsuccessfully sued the respondent the late Nkitapa Nsandube for a piece of land and appurtenances known as Plot No. 370 located at Mikocheni within Kinondoni District, Dar es salaam city. The trial court entered its judgment on 30/09/2004 and a decree dated 22/12/2004. Discontented he successfully appealed to the High Court in Civil Appeal No. 141 of 2010 as judgment was reached in his favour. This time the respondent was aggrieved with the High Court decision and advanced to the Court of Appeal by way of appeal challenging the decision meted against him on 07/06/2012. The Court of Appeal on the 15/04/2016 found the said appeal incompetent for being premised on null proceedings in the High Court as the decree of the trial court bore different date from that of the judgment. It nullified the proceedings and set aside the decision of the High Court while ordering the applicant to file a fresh appeal subject to limitation of time. It is from that order the applicant who is now deceased preferred this application which later was taken over by the present applicants as representatives. The same is the story to the presentation of the respondent.

Under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] this court has discretion to extend time as prayed by the applicants. However, it can do so only when the applicant has supplied good cause to substantiate his delay. What amount to good cause is relative and

depends upon circumstances of each individual case as stated in the case of **Ehangir Aziz Abdulrasul Versus Balozi Ibrahim Abubakar and Bibi Sophia Ibrahim**, Civil Application No. 79 of 2016. In the case of **Jumanne Hassan Bilingi Vs. Republic**, Civil Application No. 23 of 2013 the Court of Appeal expounded further the term "good cause" when stated:

*"In essence, what amounts to good cause is upon the discretion of the Court and it differs from case to case. But, basically, various judicial pronouncements defined **good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time.**"*(emphasis supplied)

In discharging the applicant's duty of assigning reasons for delay Mr. Mafwele learned advocate for the applicants in his submission craved leave of the court to adopt the joint affidavit duly sworn by the applicants. Traversing through that affidavit he contended that the period between 20/09/2004 to 15/04/2016, the time when the judgment was pronounced and decree issued by the trial court up to the time when the Court of Appeal found the entire proceedings in the High Court to be a nullity was accounted for as per paragraphs 1,2,3,4,5 and 6 of the supporting affidavit by the applicants. That the said time is excusable under what is termed as "technical delay" rule as it was observed in the case of **Tanzania Fish Processors Limited Versus Euso K. Ntagalinda**, Civil Application No. 41/08 of 2018 (CAT-Unreported). Mr. Mafwele asserted further that the period between 15/04/2016 when the Court of Appeal made a decision to 09/09/2016 when the applicant obtained a copy of decree with date corresponding

to the trial court's judgment has also been accounted for as per paragraphs 7 – 8 of the supporting affidavit.

With regard to the period from 09/09/2016 when the proper copy of decree was obtained up to 08/11/2016 when this application was filed in court Mr. Mafwele stated that the same has also been accounted for in paragraph 9 of the supporting affidavit. Relying on annexure WM-10, he submitted that after the proper copy of decree was procured on 09/09/2016 the late William Maeda was very sick and that he reached his demise on 10/11/2017. That the sickness is proved by medical proof which constitutes good cause for the delay as it was held in the case of **Richard Mlagala and 9 Others Versus Aikael Minja and 3 Others**, Civil Application No. 160 of 2015, (CAT- Unreported). For the foregoing reasons he was of the submission that applicants have advanced sufficient cause to justify grant of their prayers. Thus the application be allowed.

The respondent opposing the application and replying the applicants counsel's submission through Ms. Kamara learned Senior State Attorney also craved leave of the court to adopt the counter affidavit by the respondent in opposition of the application. She intimated that the applicants' submission is in two folds, the time when the dispute was in court and the time when it was out. She was of the view that the latter is accompanied by delays and inactions on the part of applicants.

Touching on the evidence produced by the applicants to justify the dates between 09/09/2016 to 08/11/2016 she doubted it. That the letter signed by Dr. Samson attached to exhibit showing that the late William Maeda attended the Hospital does not categorically state the dates when

he attended the said hospital and is not supported by medical cards. And that the medical receipts annexed to justify the averment in paragraph 9 of the applicants affidavit that the administratrix one Eugenia Maeda also was attending medical treatment as a result of her delay to file this application is also doubtful. That, apart from showing that she attended the hospital only on the 09/09/2016 other days remained unaccounted for and the receipts are also not signed by her. Further to that she adds that it is shown that she was outpatient the fact that signifies she was not serious to the extent of failing to file this application. Even though Ms. Kamara citing the case of **Ramadhan J. Kihwani Versus TAZARA**, Civil Appeal No. 401 of 2018 (unreported) which quoted the case of **Bushiri Hassan Versus Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 submitted that delay of even a single day has to be accounted for.

Ms. Kamara argued further that under section 110(1) of Evidence Act, [Cap. 6 R.E 2002] supported by the case of **Geita Gold Mining Ltd & Managing Director GGM Versus Ignas Athanas**, Civil Appeal No. 227 of 2007,(unreported) citing the case of **Anthony M. Masanga Versus Penina (mama Ngesi) & Lucia (Mama Anna)**, Civil Appeal No. 2014 (unreported) the applicants are supposed to prove all facts they assert to have existed. That the facts that the late William Maeda reached his demise on 10/11/2017 and that letters of administration was granted to the applicants to entitle them step into shoes of the former applicant are not supported by any evidence. In other word she is question the locus of the applicants in this application. All stated Ms. Kamara prayed for dismissal of the application with costs since the

applicants delay is not supported by sufficient cause but rather their inaction.

What is discerned from both submissions which submission I subscribe to is that there is no dispute that the period between 20/09/2004 to 15/04/2016, the time when the judgment was pronounced and decree issued by the trial court up to the time when the Court of Appeal found the entire proceedings in the High Court to be a nullity and 15/04/2016 to 09/09/2016, when the Court of Appeal made a decision and the applicant obtained a copy of decree with date conforming to the one in the judgment of the trial court has been accounted for. The case of **Tanzania Fish Processors Limited** (supra) cited by Mr. Mafwele to justify what he termed "*technical delay*" is applicable for that period. The only disputed period which this court has to evaluate the evidence produced and determine on is between 09/09/2016 to 08/11/2016 when the proper copy of decree was obtained up to the time of filing this application in court which makes a total of 60 days. In establishing good cause for delay of 60 days backed by the case of **Ramadhani J. Kihwani** (supra) Ms. Kamara submitted that delay of even single day must be accounted for. I subscribe to her submission on that point as it is the requirement of the law. I wish to state that there are also guiding guidelines for the court to establish whether the applicant has advanced good cause to warrant extension of time or not. Propounding on those guidelines the Court of Appeal in the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported – CAT) held that:

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrary. On the authorities however, the following guidelines may be formulated;

- (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 are other sufficient reasons, such as the existence of a point of law sufficient importance, such as illegality of the decision sought to be challenged."*

Further to that I would wish to add that in accounting for the delay the applicant must account for each and every day that passed beyond the prescribed period of time. This was the position in the case of **Alman Investment Ltd Vs Printpack Tanzania And Others**; Civil Application No. 3 of 2003 (Unreported) that;

"Applicant ought to explain the delay of every day that passed beyond the prescribed period of limitation."

It was Mr. Mafwele's contention that during that time the late William Maeda was very sick so he could not be able to file this application timely. And that he reached his demise on 10/11/2017. That, the said sickness is proved by medical proof a letter from Massana Hospital thus constituting good cause for the delay. Ms. Kamara is of different view in

that the alleged letter is not supported by medical cards and does not state the dates which he attended the hospital. On the medical receipts presented to justify sickness of Eugenia Maeda she submitted that, apart from being doubtful for not being signed by her it accounts for a single day only of 09/09/2016 leaving other 59 days unaccounted for. And further on the proof of death that there was no evidence produced to prove that fact.

Basing on the letter annexure WM 10 this court has no reason to doubt of the late William Maeda's sickness. What remains in doubt as is was rightly raised by Ms. Kamara is whether he was sick consecutively for all that period of 60 days to the extent of failing to file this application timely. It is true that the letter does not state the dates when he was receiving treatment under that hospital nor does it state that he was admitted. These missing facts are making this court to disbelieve the applicants' story that the late William Maeda was sick at all that time. That aside as stated in paragraphs 7 and 8 of the affidavit in support of the chamber summons the applicants averred that the late William Maeda instructed his advocate Brotherhood Attorneys to initiate the procedure for procurement of the proper decree from the District Court of Kinondoni, the decree which was obtained on 09/09/2016. That means he was informed by his lawyer of the procurement of the proper decree. The court is not told of what that lawyer advised his client to make sure that the application is filed in time. This is contrary to the practice of the court which requires that an assertion must be proved by an affidavit of a person alleged to have given the applicant information about the status of the case. See the decision of this court in the case of **Christopher Mtikila Versus Jacob Nkomola and 3 others**, Civil

Case No. 278 of 1997 (unreported). Absence of such affidavit from the lawyer/advocate leaves the court with so many questions such as Did he communicate his client after obtaining the copy? Why did he fail to file the application timely and waited until 08/11/2016? When did he get the instructions to file the application? Now how can the court know as to when the late Maeda became aware of the receipt of the proper decree by his lawyer so as to decide whether those days have been accounted for? Since all these important questions are left unanswered this court is inclined to arrive to the conclusion that the remained 60 days have not been sufficiently accounted for, for want of sufficient evidence to justify the delay on each day. It follows therefore that the applicants' cited case of **Richard Mlagala and 9 Others** (supra) on sickness as sufficient cause would not apply under the circumstances of this case.

Having so concluded let me albeit so briefly consider the queries raised by Ms. Kamara. With regard to the sickness of the administratrix one Eugenia Maeda I am at one with Ms. Kamara that the receipt produced accounts for single day only which is 09/09/2016 leaving the rest of the days unaccounted for. However, I wish to add here that even if all days were accounted for still could not add any value to this application as by then Eugenia Maeda was not a party to the suit to give any instruction to the lawyer or file any document in court as the late William Maeda was still alive. Thus any effort to justify her sickness has no relevancy to the present application. I also agree with Ms. Kamara's contention that the late William Maeda's death allegedly occurred on 10/11/2017 was not proved by any evidence. Had the applicants wanted the court to so believe they would have produced the death certificate which is missing. Lastly is with regard to the *locus standi* of the applicants in this case

which she submitted that the same was not established for want of letters of administration. This contention in my opinion is unfounded. Having gone through the court proceedings it is noted that on the 17/10/2018 the court after being satisfied of their status ordered for amendment of chamber summons to incorporate applicants as legal representatives of the late William Maeda. I hold that if anything the respondent should have raised her concern there the right which she waived. She cannot therefore bring that complaint now through the back door.

For the foregoing reasons, I would conclude that, under the circumstances of this application, applicants have failed to demonstrate good cause that would entitle them extension of time as sought. The application is consequently hereby dismissed with costs.

It is so ordered.

DATED at DAR ES SALAAM this 22nd day of May, 2020.



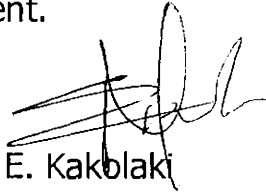
E. E. KAKOLAKI

JUDGE

22/05/2020

Delivered Dar es Salaam today on 22/05/2020 in the presence of Mr. Sylvester Korosso Advocate holding brief for Mr. Methusela Boaz

Mafwele advocate for the Applicant, **Ms.** Lulu Masasi, Registry Officer and in the absence of the respondent.

A handwritten signature in black ink, appearing to be 'E. E. Kakolaki', written over a horizontal line.

E. E. Kakolaki

JUDGE

22/05/2020