

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC.CIVIL APPLICATION NO. 280 OF 2019
(Arising from Land Case No. 105 of 2015)

PRISILA PAULO TARIMO.....APPLICANT
VERSUS
BANK OF AFRICA (T)
LIMITED.....RESPONDENT

RULING

Date of last order: 09/06/2020

Date of Ruling: 16/07/2020

S.M. KULITA J;

This is an application for an extension of time for leave to appeal to the Court of Appeal of Tanzania. The application is made under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002]. The application is accompanied with a chamber summons and the affidavit of **PRISILA PAULO TARIMO**, the Applicant. The applicant seeks for extension of time to file leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court

of Tanzania, Dar es Salaam District Registry, in Land Case no. 105 of 2015, delivered on 27th September, 2017.

The application was heard by way of written submissions. The applicant is represented through the legal aid services from the Tanganyika Law Society. In her affidavit the applicant prays to be granted leave to file leave to appeal to the Court of Appeal, and the reasons are stated from paragraph 7 to 12 of the affidavit. She prays for the same be adopted as part of her submission.

The applicant submitted that she filed her application for extension of time to file the appeal at the Court of Appeal to this vide miscellaneous Civil Application No. 498 of 2018 which was struck out by this court. The applicant also submitted that the cause of delay was due to late supply of the copies of judgment and decree of the decision sought to be challenged. She submitted that the said documents were supplied to her on the 15th August, 2018. According to the applicant as she submitted that amounts to good cause. To support her argument she cited the case of consolidated civil applications of **TANZANIA REVENUE AUTHORITY V. TANGO TRANSPORT COMPANY LIMITED, and TANGO V. TRANSPORT COMPANY LIMITED TANZANIA REVENUE AUTHORITY** which elaborated the factors to be taken into account on granting extension of time.

Further the applicant submitted that there are matters of law which need to be addressed to the Court of Appeal in respect of the said decision of High Court.

The applicant concluded her submission by praying for this court to grant her extension of time to file the appeal to the Court of Appeal.

Replying the applicant's submission the respondent's Advocate Mr. Issa Mrindoko started to submit by praying for the counter affidavit deponed by the applicant's principal officer to form part of his submission. Mr. Mrindoko submitted that the applicant has stated in her affidavit that the main reason for her to file appeal out of time was delay to be supplied with the copies of judgment and decree, however Mr. Mrindoko submitted that the requirement to attach the copies of judgment and decree sought to be challenged is not necessary according Rule 45 to the Court of Appeal Rules as amended by G.N. No. 362 of 2017. Mr. Mrindoko also submitted that the applicant has not shown neither in her affidavit nor in her submission an account for each day of delay which is almost two years since the said decision was delivered on the 27th October, 2017. He said that the applicant abuses the court process in dispensing justice. He cemented his argument by citing the case of **SELEMANI JUMA MASALA V. SYLVESTER PAUL MOSHA &**

ANOTHER, Civil Application No. 210/2017, CAT at DSM (unreported) and the case of ELFAZI NYATEGA & 3 OTHERS V. CASPIAN MINING LTD, Civil Application No. 44 /08 of 2017, CAT at Mwanza, (Unreported).

Further Mr. Mrindoko submitted that the applicant has not demonstrated as to when the said Miscellaneous Civil Application no. 498 of 2018 was struck out. He said that the applicant was duty bound to give an account of delay from the date of delivery of the said ruling to the date of filing the instant application.

Mr. Mrindoko concluded his submission by praying for the dismissal of this application as it has no merit.

In her brief rejoinder the applicant maintained her position as submitted in her submission in chief.

Having carefully considered the submissions of both parties I have this to say; the issue in the instant application is whether the applicant has established sufficient cause for the court to grant extension of time. In her submission together with the reasons submitted in her affidavit the applicant has submitted that the reason for not filing the appeal in time was occasioned by delayed to be supplied with the copies of judgment and decree of the decision sought to be challenged. Having gone through the records

and the applicant's submission I have noted that the applicant obtained the copies of judgment and decree on the 15th August, 2018 where she later filed an application for extension of time which was struck out for legal technicalities, and that is where the applicant was supposed to account for the day to day cause of delay, that is from the day that the application was to struck out to the day of filing of the present application. I agree with the Respondent's Counsel, Mr. Mrindoko that the applicant was duty bound to account for each day of delay from the date the first application for extension of time was struck to the present application. The same view was observed in the case of **MZA RTC TRADING COMPANY LIMITED V. EXPORT TRADING COMPANY LIMITED, CIVIL APPLICATION NO. 12 OF 2015, TZCA at MWANZA**, the court stated;

"Case law has established that before the court exercises its discretion under Rule 10 it must have sufficient material before it to account for the delay. The applicant must also show diligence in prosecuting the intended action....."

I don't see anywhere in the applicant's affidavit nor in her submission where an account for delay was established.

The applicant also argued that the copies of the judgment and decree sought to be challenged were not supplied to her in time. The applicant has misconceived the fact that following the struck out of the previous application the applicant had to act promptly by filing another proper fresh application considering the fact that she already had the judgment and decree sought to be challenged with her. As per **MZA RTC TRADING COMPANY LIMITED (supra)** the applicant is regarded negligent in prosecuting her case, hence does not deserve extension.

The applicant also submitted that among the grounds for the extension of time to be granted by the court includes the fact that there are matters/points of law that the applicant is going to address the Court of Appeal in respect of the decision of this court. The applicant submitted that the point of law that she is going to present at the Court of Appeal is that the decision sought to be challenged is tainted with illegalities. I am of the view that despite the fact 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 (UNREPORTED)** found that existence of point of law is of sufficient importance, illegality of the decision sought to be challenged being one of the grounds for the

applicant to succeed on the application for extension of time, but such ground will only have weight upon showing sufficient cause and account of delay. The fact that the applicant has failed to account for the day to day cause of delay, he is regarded to have failed to show sufficient cause for the delay to file application for leave to appeal to the Court of Appeal, the application should therefore fail.

In upshot I find this application has no merit, I hereby dismiss it with costs.



S.M. KULITA

JUDGE

16/07/2020

