

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

MISC. CIVIL APPLICATION NO. 364 OF 2019

(Arising from Revision No. 24 of 2018 before the District Court of Temeke District at Temeke)

ABDALLAH SAID DILUNGA

(As Administrator of the estate
of the late Said Mwinyimkuu Dilunga

.....**APPLICANT**

VERSUS

KARIMU MOHAMED STAMBULIRESPONDENT

RULING

MASABO, J.:

The application is for extension of time within which the applicant can file an application for revision against the decision of the District Court of Temeke District at Temeke in Revision No. 24 of 2018.

The time limit for filing an application for revision from the district court to the High Court is 60 days. Section 14(1) of the Law of Limitation Act [Cap 89 RE 2019] under which the application is made vests in this court discretionary powers to extend the time within which such application can be made if the applicant ably demonstrates that he was inhibited by a good cause.

According to the facts discernible from the pleadings, the impugned ruling was delivered on 21/2/2019. This application was filed on 19/7/2019 which is approximately five months after the date of the impugned revision. Going by the time limitation of 60 days, the application ought to have been filed on

or before 22/4/2019. Thus, the delay is for the duration of 88 days (almost 3 months). This is long period. Unless the application is supported by a good cause it is not excusable. The issue to be determined, therefore, is whether or not the applicant has demonstrated a good cause to warrant the enlargement of time.

The applicant has narrated his reasons in paragraph 7 to 18 of the affidavit deponed by the applicant which was filed in support of the application. The reasons as stated in the affidavit and as articulated further in the written submission filed in support of the application can be summarized as follows: **First**, the impugned decision was delivered in the applicant's absence and on a date other than the one set for ruling and he was not availed with notice as to the rescheduling of the ruling. **Second**, the applicant was not immediately furnished with a copy of the ruling irrespective of several follow ups and reminders. **Third**, when he was finally furnished with the ruling and drawn order on 08/7/2019, he noticed that the same was not dated. The dated drawn order was furnished to him on 16/7/2019. He also deponed that, there is an illegality in the decision to wit; the District Court failed to note that the primary court revoked the letters of administration *suo motto* and without according the parties a right to be heard contrary to the provision of paragraph 2 (c) of the Magistrate Courts Act, Cap 11 RE: 2019 which requires that revocation must be with a good cause.

In support of the application the applicant having cited the case of **Quality Group Limited V. Tanzania Building Agency** Civil Application No. 192 of 2013, Court of Appeal (unreported) argued that the delay was not occasioned by the applicant's negligence. Rather, it was accessioned by the

court delay in furnishing him the ruling and drawn order. Thus, he has satisfied the requirement of the law.

On the point of illegality he cited the decision of the Court of Appeal in **Shelina Midas Jahanger and 4 Others v Nyakitonya NPF Company Limited**, Civil Application No. 186 of 2015, **Ahmad Bauda V. Raza Hussein Ladha Damji and 2 Others** , Civil Application No. 215 of 2016 and **Dismas S/O Bunyerere V. The Republic**, Criminal Application No. 42 of 08 of 20, all unreported, and argued that the point of illegality suffices as a good cause for extension of time.

In reply the respondent having cited **Ratman versus Cumara Samy** (1965) 1 WLR 8 and **Benedict Mumelo V. Bank of Tanzania**, Civil Appeal No. 12 of 2012, Court of Appeal of Tanzania (unreported), submitted that in an application for extension of time the applicant must demonstrate a good cause. He argued that since the applicant has miserably failed to demonstrate a good cause the application cannot be granted.

Upon consideration of the pleadings and the submission made by both parties as per the narration above, it is fairly clear that the applicant has ably demonstrated a good cause for extension of the time within which to file his application. The affidavit and the correspondences appended thereto demonstrate clearly that the delay was not occasional by his negligence. Rather, it was occasioned by the court. His correspondences with the Deputy Registrar demonstrate vividly that he did not sleep on his right. Rather, he was diligently pursuing it. Therefore, his application merits the consideration of this court to enable him to pursue his right in court.

On the ground of illegality, the position of law as it currently stands is that, an illegality of the decision that by itself, constitutes a good cause warranting the exercise of the court's discretion in extending the time. Pursuant to the authority in **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT) (unreported) for an illegality to suffice as ground for extension of time, the applicant must demonstrate to the satisfaction of the court that there is a point of law of sufficient importance which is apparent on the face of the record such as the question of jurisdiction. In the instant case, the illegality complained of emanated from the primary court whose record was not availed to this court. Thus, there are no material upon which to gauge the finding.

Nevertheless, since I have found that the applicant was diligent in pursuit of his right, I grant the prayer. The Applicant is to file his application within 14 days from the date of this ruling. Parties are to bear their respective costs. Cost to follow event.

DATED at DAR ES SALAAM this 20th day of October 2020



J.L. MASABO
JUDGE