IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 17 OF 2020

MALAGILA SHIMBA.....1st APPLICANT

THE REGISTERED TRUSTEES OF

TANZANIA LEGION & CLUBS.....2nd APPLICANT

VERSUS

THE REGISTRAR OF SOCIETIES.....1st RESPONDENT

ADMINISTRATOR GENERAL.....2nd RESPONDENT

PERMANENT SECRETARY, MINISTRY

OF HOME AFFAIRS.....3rd RESPONDENT

THE ATTORENY GENERAL.....4th RESPONDENT

RULING

08/09/2020 & 02/10/2020

Masoud, J.

The applicants are furious with the alleged de-registration of the second applicant and their society, Tanzania Legion & Clubs, from the registries of the registered trustees and societies by the first and second respondents, namely, the Registrar of Societies, and the Administrator General. The decision de-registering the second applicant and their society was allegedly discovered on 09/03/2020 via letters dated 06/03/2020 and 19/12/2019 written by the first and second respondents respectively. The applicants also complain that the alleged decision also

involved the sale of the second applicant's farm following the de-registration. The primary complaint of the applicants is that the decision to de-register the second applicant and the consequent decision to sale the said farm is tainted with illegality as it was not sanctioned by a properly sanctioned general meeting of the Tanzania Legion and Clubs.

The affidavit in support of the application was sworn by the first applicant, and one, Mwajanga Mwambela Mwankunda. The only description of the status of the deponents in the second applicant is in respect of the said Mwajanga Mwambela Mwankunda who claimed to be one of the trustees and principal officer of the second applicant. There was nothing about the status of the first applicant to the second applicant, but the second respondent, that is, the Chairperson and lawful office bearer of the Tanzania Legion & Clubs, and hence, conversant with the facts deponed in the affidavit.

Having discovered the deregistration on 09/03/2020 which deregistration was pursuant to a meeting allegedly held on 18/09/2019, the applicants were aggrieved. As they felt that they were already out of time to file application for leave to apply for prerogative orders within six months of the complained decision, they filed the present application on 04/04/2020 seeking extension of time within which to file an application for prerogative orders against the said decision.

The application was not only opposed by the respondents who filed a joint counter affidavit, but was also met by two preliminary points. The points of objection were to the effect that, firstly, the affidavit in support

of the application is incurably defective and bad in law for containing a defective verification; and secondly, the applicants have no locus standi to sue. Starting with the second point of objection, I had no difficulties in finding that the same does not qualify as a pure point of law in so far as it calls for evidence as is apparent in the written submissions by the respondents on the point. On this observation and finding, I would agree with the submissions of the counsel for the second respondent in this respect which relied on **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd** [19969] EA 696, at page 791.

I say so because the submissions relied on the averments in the respondents' counter affidavit, the arguments that the deponent (i.e Mwajanga Mwambela Mwankunda) was no longer a trustee or principal officer of the second applicant, the tenure of the trustees of the second applicant which allegedly ended on 2015, the claim that the management of the second applicant is now under RITA, and the absence of a factual proof indicating that the said Mwijanga Mwankunda had been authorized to sign documents in relation to the matter at hand. I was thus convinced that this point could not be dealt with at this stage as a preliminary issue and must therefore fail.

The point that the affidavit in support of the applicant is defective for having a defective verification merits expansive examination whilst having regard to the rival submissions. There was no dispute in the rival submissions that paragraph two of the applicants' affidavit mentioned the second respondent as one of the deponents who is the Chairperson and office bearer of the Tanzania Legion and Clubs and hence

conversant with the facts deposed in the affidavit which were to be accordingly verified in the verification clause.

On the other hand, the verification clause mentioned the deponents as the first applicant and one, Mwajanga Mwankunda, as the second applicant's principal officer. Clearly, as also argued by the respondents' learned State Attorney, while the said first applicant signed the verification clause as the deponent, there was nothing in the affidavit expressly saying that the said first applicant was conversant with the facts he deposed. The second respondent who only featured in paragraph two of the applicants' affidavit is the Administrator General against whom the present application was filed.

Disputing the arguments by the respondents, the applicants had it that the inclusion of the second respondent was not fatal as the affidavit was clearly deposed by the deponents whose names appear in the verification clause and the opening paragraph of the joint affidavit. Not only that but also the second respondent was clearly one of the parties against whom the application was brought and could not as such be a deponent of the joint affidavit. The inclusion of the second respondent in the second paragraph of the affidavit was further explained as an error which do not affect the whole affidavit and its truthfulness. The overriding objective was, accordingly, invoked by the first applicant's counsel in a bid to cure the error.

My reading of the 13 paragraph affidavit and consideration of its averments as a whole made me to agree with the applicants that the

inclusion of the second respondent in the second paragraph of the said joint affidavit was a slip of a pen which did not at all change the clear understanding and meaning of the joint affidavit supporting the application for extension of time as against the respondents. Even if the said paragraph were to be expunged, the remaining paragraphs would meaningfully sustain the joint affidavit and support the application; regard being had to, firstly, the introductory part of the affidavit which clearly mentioned the deponents of the affidavit, and secondly, the verification clause duly made and signed by the relevant deponents. Consequently, this objection is overruled and must accordingly fail.

With the above outcome, the remaining issue for my determination is whether the applicants' affidavit advanced sufficient reasons for extension of time within which to file application for leave to apply for prerogative orders against the impugned decision. In respect of this issue, it is worthwhile to recall that the affidavit of the applicants had it that the applicants discovered the decision of the de-registration of the second applicant and the society and the sale of the farm on 09//03/2020 which decision was allegedly made pursuant to a resolution of a meeting held on 18/09/2019.

Reckoning from 18/09/2019 when the alleged meeting was held, it is vivid that the six months period within which the application for leave could have been made expired on 17/03/2020. It would therefore mean that when the applicants made the alleged discovery, they were still within time for they had about seven days ahead of them before the

expiry of the six months period. The present application was sadly filed on 16/04/2020 and not on or before 17/03/2020.

There were no explanations given accounting for the delay other than that they were not aware of the alleged decision until the same was accidentally discovered on 09//03/2020. This account however does no cater for the whole period of the delay. There was also an allegation that the decision to de-register and the sale of the farm was tainted with illegality. It was in this respect alleged that the decision was not a result of any lawful meeting of the society and the applicants were never notified of the decision. Notably, the alleged decision, which was allegedly tainted with illegalities was in relation to the respondents herein.

Two letters were relied on to show that the impugned decision was indeed made and that the second respondent and the society had been de-registered. They were letters dated 06/03/2020 and 19/12/2019 by the first and second respondents respectively. It was only the latter that was produced before the court as an annexure to the affidavit, whereas the former was not. There were no explanations in the submissions in chief why the former was not annexed despite being referred in the joint affidavit and an indication that it was duly annexed to the affidavit. The only letter which was annexed was not addressed to the applicants. The letter, in my consideration, neither suggest that the respondents have indeed de-registered the second applicant and the society, nor suggests that the first, second, and third respondents made a decision to de-register the second applicant and sale the alleged farm.

It is perhaps not surprising that the respondents had it that there was no decision of the first, second, and third respondent de-registering the second applicant and the society and selling the firm, which could be said to be tainted with illegality to warrant granting extension by this court for just such reason as against the respondents. In other words, the learned State Attorney for the respondents had it that in so far as there was no decision of the respondents impugned by the applicant, this application and the allegation of illegality of the decision have no basis at all.

In the same vain, the respondents' counsel was of the view that if at all there were such decision, the proper course was for the applicants to appeal under sections 27 and 19 the Trustees' Incorporation Act, cap. 318 and the Societies Act, cap. 333 to the Minister responsible for justice and the Minister responsible for societies respectively, instead of applying for judicial review in this court. I understood the respondents' learned State Attorney as saying that if there were a decision of the respondents capable of being challenged by the applicants, the application for extension of time to apply for judicial review could still not stand as there were other remedies that the applicants must exhaust.

With the foregoing in mind, I cannot in the circumstances say that the applicants' allegation of illegality was apparent on the face of the record and was clearly raised and argued. Thus, the court cannot in the circumstances ascertain whether the alleged illegality is of "sufficient importance" for it to exercise its discretion to extend the time. It is indeed settled law that whenever there is an allegation of illegality, it is

important to give an opportunity to the party making such allegation to have the issue considered.

But I am also aware of the decision of Hon. Massati JA (as he then was), 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) in which the Court of Appeal, among other things, stated as follows (pages 6-7):

> *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 arbitrarily. On the authorities however, the following guidelines may be formulated:-*
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> *(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 of sufficient importance; such as the illegality of the decision sought to be challenged.*
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> .....
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> *In **Valambhia's case** ...this Court [the Court of Appeal] held that a point of law of importance such as the illegality of the decision sought to be challenged could constitute a sufficient reason for extension of time. But in that case, the errors of law, were clear on the face of the record.....Since every party intending to appeal seeks to challenge a decision on points of law or facts, it cannot in my view, be said that in **Valambhia's case**, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points 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 would add that it must also be apparent on the face of the record, such as question of jurisdiction, not one that would be discovered by a long drawn argument or process.

I am clear that the above position of the law has it that it is not every allegation of illegality that would constitute a sufficient reason for granting extension. It will only constitute a sufficient reason if the alleged illegality is apparent on the face of the record and not one that has to be established by a long-drawn argument or process. It must in addition be one of sufficient importance. This statement of principle of law is relevant and applicable to the circumstances of this matter.

In the upshot, and for the afore going reasons, there were no sufficient reasons shown to warrant granting of the extension of time. Accordingly, the application fails and is hereby dismissed with costs.

Dated at Dar es Salaam this 2nd day of October 2020.

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B. S. Masoud
Judge