

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

MISCELLANEOUS CIVIL APPLICATION NO. 528 OF 2019

(Originating from the ruling and order of the trial Magistrate of the District Court of Temeke at Temeke in Civil Case No. 21 of 2011)

ORWIDO SACCOS LIMITED -----APPLICANT

VERSUS

MAGRETH MWENDA ----- RESPONDENT

RULING

Date of last order: 16.04.2020

Date of Ruling: 23.10.2020

Ebrahim, J.:

The instant Application has been made under the provisions of **Section 14(1) of the Law of Limitation Act, Cap 89 RE 2002 and section 95 of the Civil Procedure Code, Cap 33 RE 2002**. The Applicant is seeking for extension of time to file an application for revision out of time from the ruling and order of the trial magistrate in Civil Case No. 11 of 2011. The Application is supported by an affidavit deposed by Paskazia January Mibazi, principal officer of the Applicant.

Going by the averments of Applicant in the affidavit, the Respondent herein obtained a loan from the Applicant. Things went sour, and on 3rd April 2011,

the Respondent successfully sued the Applicant on a judgement delivered on 19th November, 2014. On 2nd February 2015, the Applicant timely lodged an appeal before this court, Civil Appeal No. 14 of 2015. The same was dismissed for want of prosecution on 30.11.2016. On 12th May 2017, the applicant lodged an application to set aside dismissal order, the said application is still pending. However, on 25th August 2017, the Respondent successfully instituted execution proceedings vide the decision of the District Court of 19th April 2018. Aggrieved, on 23rd April 2018 the Applicant filed application for revision before this court. The same was struck out on 30th August 2019 on wrong citation of the law; hence the instant application. The Applicant states that the intended revision is geared to challenge the imprisonment of the Applicant's manager whilst there are available remedies; and that the trial court lacked jurisdiction.

Responding to the averments by the Applicant, the Respondent filed counter affidavit of which she noted the contents of para 1,2 and 3 of the affidavit; and admitted the contents of para 6 and 7 of the affidavit. She vehemently disputed the rest of the contents of the affidavit and called for the proof thereof.

The application was argued by way of written submission. The Applicant was represented by Ms. Paskazia January Mibazi, the Applicant's manager; whilst the Respondent appeared in person.

I have dispassionately read the rival submissions of both parties. In determining the matter before me, I shall not reproduce the lengthy submissions by the rival parties as they are in the records. I shall however refer to them in the course of addressing substantive issues.

Submitting in support of the application, the Applicant prayed to adopt the contents of the affidavit to form part of the submission.

The Applicant began by narrating the series of events which led to the instant application. She stated that there was no delay in filing the instant application for revision after the previous one was found to be incompetent by Hon. Ngwala. J (as she then was), which termed as technical delay. In a bid to demonstrate sufficient reason or cause in terms of **item 21 Part III of the Law of Limitation Act, Cap 89 RE 2002**, the Applicant contended that it is the matter of law that irregularity or illegality of the impugned decision is sufficient ground for the court to grant extension of time so as to rectify the mistake. She cited a number of cases including but not limited to **Patrobert Ishengoma Vs Kahama Mining Corporation Ltd and 2 Others**; Civil Application No. 2 of 2013 (CAT – Tabora); and the case of

Theresia Mahoza Maganga Vs Administrator General (RITA) citing with approval the case of **VIP Engineering and Marketing Ltd and Two Others Vs Citibank Tanzania Ltd**, Civil Reference No. 67 and 8/2006 (CAT) and held that:

"It is therefore settled law that, a claim of illegality of the challenged decision, constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay".

In cementing her argument further on what amount to sufficient cause, the Applicant referred to the Court of Appeal case of **Yusuf Same and Another Vs Hadija Yusuf**, Civil Appeal No. 1 of 2002 (CAT – Unreported) which held that the term sufficient cause should be given a wide interpretation to encompass reasons outside the Applicant's power to control or influence the delay. The Applicant further cited the case of **Joseph Paul Kyauka Njau & Others Vs. Emmanuel Paul Kyauka Njau & Others**, (CAT) which the Court set some principles in considering sufficient cause. However, the said case was not attached with the submission and it is unreported; hence would not be at easy to refer to the same. She stressed on the issue of lack of pecuniary jurisdiction by the District Court to entertain the suit in terms of **18(i)(ii) and section 40(2)(b) of the Magistrate**

Court Act, Cap 11 RE 2002 that the claimed sum fell within the jurisdiction of the Primary Court. She also insisted that the District Court wrongly detained the manager as a Civil Prisoner which should have been a last resort. She prayed for the application to be granted.

Responding to the submission by the Applicant, Respondent began by pointing on missing number of years 2011 of which I would not even address as it is conspicuous that it is a typographical error.

She commented on the presence of a pending appeal and the instant application for revision as abuse of court processes. To cement her stance on the argument, she cited the case of **Jolly Investment Ltd Vs Tanzania Ports Authority**, Miscellaneous Land Application No. 523 of 2018 (Unreported). She also argued on the importance of showing good cause and accounting for each day of delay, which she submitted that it is missing in Applicant's application. She further cited the case of **John Dongo and Others Vs Lepasi Mbokoso**, Civil Application No. 14/01 of 2018 (Unreported). She commented on the previous application that was struck out by this court as not sufficient reason to extend time since failure by an advocate to check the law does not amount to sufficient reason – **Calico Textile Industries Ltd V Pyraliesmail Premji** (1983) TLR 29.

Submitting on the issue of illegalities, the Applicant stated that the said illegalities must be apparent in the face of record, the position which was held in the case of **Omary Ally Nyamwege and Others Vs Mwanza Works**, Civil Application No. 94/2005 (Unreported – CAT). She stated further the matter in dispute was decided in year 2011 of which in terms of **section 18(a)(iii) of the Magistrate Court Act**, before the amendments, the pecuniary jurisdiction of the Primary Court was Tshs. 3,000,000/-. She argued on the alternative that the law does not restrict the pecuniary jurisdiction of the District Court from entertaining cases that have been stated in the Magistrate Court Act as held in the case of **Mkerenge Horera Rashid Vs Abdul Ally Mbonde and Others**, (DC) Civil Appeal No. 6 of 2017 (HC- Tanga- Unreported). She prayed for the application to be dismissed with costs.

Re-joining on the issue of abuse of court processes, the Applicant cited a number of cases in arguing that it is improper to blame the applicant. She insisted that extension of time will be granted where there is issue of illegality. She further distinguished the cited case of **Mkerenge Horera Rashid** (supra) with another decision of this court in the case of **Denja John Botto & Two Others Vs Umoja wa Wafanya Biashara Ndogo**

Ndogo Maili Moja, Civil Appeal No. 157 of 2018, p.7 where it was held that:

"In my considered view they cannot. If the legislature wished to extend that proviso to subordinate courts, it would not restricted it to the high court. As the wording currently stands, the general rule is that subordinate courts cannot entertain civil cases where the value of the subject matter is within the pecuniary jurisdiction of the primary court."

She reiterated her previous prayers.

Extension of time is discretionary powers of the court to be judiciously exercised. The Court of Appeal has in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women Christians Associations**, Civil Application No. 2 of 2010 established guidelines to be observed by Court in granting extension of time. The Court held as follows:

"Four guidelines which should be observed by Court in granting extension of time: that is:

- 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 act that he intends to take, and*
- d) **If the court feels that there are other sufficient reasons, such as existence of the point of law sufficient importance; such as the illegality of the decision sought to be challenged"***

Expounding further on the consideration for extension of time, Court of Appeal had in the case of **Losindilo Zuberi V Ally Hamisi Losindilo Zuberi**, Civil Application No. 5 of 1999, CAT- DSM (UR) citing with authority the case of **Principal Secretary, Ministry of Defence and National Service V Devram Valambhia** [1992] TLR said that:-

*"We have held in one of the many applications involving Devram Valambhia V Transport Equipment Ltd that this Court will extend time within which to file an application if there is an allegation of an illegality. **I am of the considered opinion that where there is an allegation that provision of law has been contravened, this Court cannot wring its hands in desperation but must give itself an opportunity to look into the matter...**" (Emphasis is mine).*

The similar position was held in the cited case of **Amour Habib Salim versus Hussein Bafagi**, Civil Application No. 52 of 2009.

As is to could be gathered from the narration of facts above and the affidavit of the Applicant; the pending application to set aside dismissal order on Civil Appeal No 14 of 2015 was on the appeal against the decision of the trial court on the main suit i.e. Civil Case No. 21/2011. However, the application for extension of time to file revision, is derived from execution proceedings as well as the main suit. Nevertheless, the question comes, is it proper to have multiplicity of applications in challenging the jurisdiction of the trial court.

The Applicant banked heavily on the fact that the trial magistrate illegally adjudicated the matter which it had no pecuniary jurisdiction to do.

Out-rightly in a bid not to argue the revision, but on the face of it, I am of the views that the trial court had jurisdiction to entertain the matter because the suit was filed in 2011. More- so the substantive claim was Tshs. 5,000,000/- as specific damages (loan amount) and Tshs. 20,000,000/- was the amount to be assessed by the court. All in all, as correctly stated by the Respondent the alleged illegality has to be seen at the face of the records. The pecuniary jurisdiction of the Primary Court under **section 18 of the MCA, Cap 11 RE 2002** was amended in year 2016 by **the Written Laws (Miscellaneous Amendments) Act No 3 of 2016**. Therefore, I do not agree with the reason of illegality on the issue of pecuniary jurisdiction.


Again, the intended revision to challenge the imprisonment of the Applicant's manager whilst there are available remedies; the Applicant has not supplied this court with materials to show that the trial magistrate usurped her powers in issuing such powers or that there was impropriety or material irregularity in the proceedings. All the Applicant seeks to challenge is merit/ fairness of the order whilst the magistrate was exercising her powers vested

by the law. The same can be well challenged in the pending appeal before this court.

In the circumstances therefore, I find no issue of illegality to warrant this court to exercise its judicial discretion to extend time. What remains is whether the applicant managed to account for each day of delay, of which she has not.

For all purpose and intent, I find that there are no sufficient reasons availed to the court as outlined in **Lyamuya Constructions case (supra)** to warrant this court to exercise its judicial discretion to extend time. Accordingly, I dismiss this application with costs.

Accordingly ordered


R.A. Ebrahim
JUDGE

Dar Es Salaam

21.10.2020.