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

MISC. CIVIL APPLICATION NO. 150 OF 2019
(Arising from Ilala District Court in Civil Case No. 135 of 2015)

CRDB BANK PLC.....APPLICANT
VERSUS
REHEMA HASSAN.....1ST RESPONDENT
HUSSEIN ISMAIL MAGERA.....2ND RESPONDENT

RULING

1st & 15th December 2020

MASABO, J.:-

The Applicant bank has moved this court by way of a chamber summons preferred under section 14 (1) of the Law of Limitation Act [Cap 89 RE 2019]. She is praying that this court be pleased to extend time within which to lodge an appeal against the decision of Ilala district court in Civil Case No.135 of 2015 which was delivered on 24th July 2017.

The applicant has assigned two reasons for delay. The first ground is negligence of his advocates M/s Breakthrough Attorneys who did not inform him of the judgment. It is deponed that the said advocate negligently failed to appraise the applicant of the status of the suit. The applicant became aware of the judgment on 11th January 2019 after engaging new attorneys in the name of Apex Attorneys who followed up the matter.

The second blame is apportioned to the court's delay in furnishing him with the copy of the judgment and decree. It is deponed that on 15th January 2019 the applicant's new attorney applied to be supplied with the copy of judgment and decree only to be informed that the same was not typed. On 19th March 2019, they finally obtained the same and on 20th March 2019, they filed this application. The applicant has in addition to these two grounds, deponed that there is an illegality in the decision sought be challenged.

The Application was contested by the both Respondents through counter affidavits filed in this court on 9th May 2019 and 22nd July 2020, respectively. In their disposition, they both state that the copies of judgment and decree were ready for collection on 16th August 2018 and the fact that the applicant did not collect the same on time was due to no other reasons that his negligence.

Hearing proceeded in writing. Both parties had representation. The Applicant who was represented by Mr. Juventus Katikiro, having cited the decision of the Court of Appeal in **Nicholaus Mwaipyana v The Registered Trustees of the Little Sisters Jesus of Tanzania** Civil Application No. 535/8 of 2019 (unreported) and having narrated the sequence of events deponed in affidavit, submitted that the delay was not occasioned by the applicant's negligence. Rather, it was due to the negligence/inaction of Breakthrough Advocates who did not inform the

applicant of the outcome of the suit. He further argued that, as the delay was further contributed by the court's failure to furnish the applicant with the copy of judgment and decree, there is a good reason for the order for extension of time to issue.

Mr. Katikiro submitted further that there is an illegality in decision sought to be challenged, to wit the trial court nullified the loan agreement owing to absence of spousal consent which is not a legal requirement. The illegality, it was argued, transcends into a crucial point of law to be determined by the appellate court, to wit 'whether a loan secured by a landed property solely owned by the loan applicant and not used as matrimonial home can be nullified for reason of lack of spousal consent. The decision of the Court of Appeal in **Samwel Munsiro v Chacha Mwikwabe** , Civil Application No. 539/08 of 2019, CAT (unreported) was cited in support.

On their part, the respondents, through the service of Mr. Samuel Shadrack Ntabaliba, learned Counsel submitted that, the delay is inordinate as it is approximately for 2 years. It was submitted further that the delay was occasioned by the applicant's contributory negligence in that for a long period he never inquired the status of the case from the court. Mr. Ntabaliba submitted further that the assertion that there was delay in being furnished with the copy of judgment is unfounded because apart from the fact that the certified copy of the judgment was signed on 16/8/2018 which shows that it was ready for collection as from that date, the applicant has rendered no proof of the assertion that he applied for the copy of judgment on the

15th January 2019 or that he was told to wait as the judgment had not been typed.

In addition, it was submitted that the advocate is a mere agent for the party. Although he represents the party in entering appearance, the party is not precluded from seeking information as to the status of his case. Therefore, by failure to inquire on the status of the suit, the applicant acted negligently. On the issue of illegality, he submitted that the applicant's assertion is devoid of any merit as the court acted in compliance with section 114 of the Land Act [Cap 113 RE 2019] which provides a mandatory requirement for spousal consent in all mortgages involving matrimonial homes.

An appeal from the district court to this court is to be filed within 90 days from the date of the decision. Section 14(1) of the Law of Limitation Act, Cap 89 re 2019 under which this application has been preferred, confers in this court discretionary power to grant extension of time. It is a trite law that the exercise of this discretionary powers must be judiciously done upon the applicant demonstrating a good cause.

The doctrine behind this rule is as stated in ***Ratnam v. Cumarasamy*** (1964) 3 All ER 933, where it was stated that: -

> "The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step-in procedure requires to be taken, **there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have**

> **an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation.** [Emphasis added]

It is therefore crucial for the applicant to supply the court with materials to move it exercise the discretion. In other words, the applicant must demonstrate existence of a good cause to qualify for extension of time. Going by this rule, the only issue before me is whether a good cause has been demonstrated.

As correctly submitted by the applicant, the existence of a good cause is established by considering the relevant factors and materials surrounding the case which include among others, whether the applicant has accounted for all the period of delay, whether the delay is inordinate; the applicant's diligence and not apathy, negligence or sloppiness in prosecution of the action; and existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged (see **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported).

Starting with the duration of delay, since the judgment and decree sought to be challenged were pronounced on 24th July 2017, going by the 90 days rule, it is obvious that the appeal ought to have been filed on or before 24th October 2017. The fact that this application was filed on 20th March 2019

entails that the delay is for approximately 18 months. This is an inordinate delay which is inexcusable unless a good cause has been demonstrated.

The applicant has vehemently argued that he was not negligent. He has apportioned the blame to his advocate and to this court. As to the advocate, it was deponed and argued that the advocate acted negligently as he did not inform him of the outcome of the case. With aspect to the counsel, I outright reject this ground because as stated in the case cited, **Yusufu Same and Hawa Dadav. Hadija Yusuf, Civil Appeal No. 1 of 2002, Court of Appeal of Tanzania (unreported)** an error or negligence by advocate does not constitute a good cause, save in exceptional circumstances where pertaining to the circumstances of the case it is in the broader interest of justice that the time be extended. As there are no such exceptional circumstances in the instant case, the averment can not stand.

Regarding the prayer for exclusion of the days during which the applicant was, allegedly, waiting for the judgment and decree, whereas the provision of section 19(2) of the Law of Limitation Act, Cap 89 R.E 2002 is very clear and is echoed in numerous authorities of the Court of Appeal, such as in Registered **Trustees of the Marian Faith Healing Centre@ Wanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, CAT at Dar es Salaam, Civil Appeal No 64 of 2007 and **Sospeter Lulenga Vs. The Republic,** Criminal Appeal No. 107 of 2006- CAT at Dodoma(unreported), is it my humble view that for this provision to apply there must be a proof of the averment. More so in this

application where the judgment appended to application vividly shows that the decision was certified on 16/8/2020 which is a material contravention to the assertion that when the applicant applied to be supplied with the judgment, he was informed that it was yet to be word processed.

Coming to the point of illegality, while I am aware that where the point of law at issue is illegality of the decision being challenged, that by itself constitutes a sufficient reason for extension of time, it is a trite law that such a point of law must be that of sufficient importance and apparent on the face of the record, such as the question of jurisdiction and should not be one that would be discovered by a long drawn argument or process (see the decision of the Court of Appeal of Tanzania in **Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 02 of 2010; ***Ngao Godwin Losero Vs Julius Mwarabu***, Civil Application No. 10 of 2015, and in **Samwel Munsiro v Chacha Mwikwabe**, Civil Application No. 359/08 of 2019 (all unreported).

With respect to the applicant's Counsel, the point raised to wit, "*whether a loan secured by a landed property solely owned by the loan applicant and not used as matrimonial home can be nullified for reason of lack of spousal consent*" does not, in my humble opinion, meet the criteria above as it contains points of facts that can only be discovered by through a long drawn argument or process to establish that the disputed property was solely owned by the borrower and not used as matrimonial home.

In the foregoing, I find no merit in this application and dismiss it with costs

Dated at Dar es Salaam this 15th day of December 2020.

J.L. MASABO

JUDGE