

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF DAR ES SALAAM
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 453 OF 2020**

**MUGISHA ENTERPRISES LIMITED..... APPLICANT
VERSUS
CONSOLIDATED INVESTMENT
(T) LIMITED RESPONDENT**

Date of Last Order: 04/06/2021

Date of Ruling: 04/06/2021

R U L I N G

MGONYA, J.

The Applicant herein made this Application under **section 14 (1) of the Magistrate Court's Act Cap 11 [R.E. 2019]**.

The Applicant's application is seeking for the following orders:

- 1. That, this Honorable Court may be pleased to extend time for the Applicant to file revision against the records of proceedings in Civil Case No.121 of 2008 from the Resident Magistrates' Court of Dar es Salaam at Kisutu (Hon. L.M. Chamshama, Hon. I.C. Mgeta and Hon. I. Arufani) to satisfy itself as to its correctness, legality and propriety and thereafter revise the said proceedings;***

2. Costs of this application to be borne by the Respondent; and

3. Any other relief which this Honorable Court deems just to grant in the circumstances of this case.

The Application is supported by an affidavit sworn by one **ABIAH CHARLES BASASINGOHE** the Applicant's Director. The Respondent **CONSOLIDATED INVESTMENT (T) LIMITED'S director** filed a Counter Affidavit challenging the Application. In hearing, the Applicant was represented by Mr. Fikiri Liganga Learned Advocate while the Respondent was being represented by Aziza Msangi learned Counsel.

The matter was disposed of by way of written submission. Upon Court order the parties to this Applications filed their written submissions as required hence this decision.

Having ventured through the pleadings and submissions of the parties of which I intend not to reproduce but will take consideration of each it is from here; I proceed in determining the Application for extension of time as filed by the Applicant with the reasons set forth.

In reference to the Affidavit as attached to the Application under **paragraph 16**, the Applicant has put before this Court

that when the matter was being heard at Kisumu Resident Magistrates' Court he was never served with a summons although the Court records shows that summons was received and signed by his sister on his behalf.

However, under Paragraph 19 it is stated that it is with various attempt that Applicant challenged the decision of Kisumu Resident Magistrates Court but the same were struck out for legal reasons hence this Application.

Further, the Applicant states that Revision is the only remedy to her case. Since the decision sought to be revised has irregularities such as forgery and fraud. And the fact that the Affidavit demonstrates that various attempts were made in pursuing the matter through various application that were struck out, this shows that the Application for extension of time is of essence to the Applicant.

The Director for the Respondent on the other side challenged the Affidavit filed before this Court where as the above paragraph that entail on reasons as to why extension of time should be granted to the Applicant was denied.

The Respondent further stated that the ground of illegality pleaded by the Applicant has only appeared at the execution stage and therefore not at the trial stage. Therefore, this shows

that at the trial stage the proceedings were not tainted. And so the same cannot be overturned on appeal. That mere assertion of illegality is not enough to extend limitation of time.

The Respondent states that the Applicant's averments on exclusion of the days during which the Applicant was prosecuting the civil revisions that were struck out on preliminary objection have not been accounted for. Moreover, the Applicant has not stated exactly when the first and second revision were struck out. And when exactly were they filed again in Court. Respondent is of the view that, the Applicant is duty bound to account for the days spent in Court prosecuting the same.

Having said all of the above as propounded by the parties to this Application, this Court still has the power to determine on the application for extension of time as sought by the applicant. It is trite law and stated in a number of cases that it is the discretion of the Court to exercise its discretionary power of extending time when applied for in the Courts of law. In the case of ***BENEDICT MUMELLO VS. BANK OF TANZANIA, Civil Appeal No. 12 of 2012***, and the Court held *inter alia* that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause." See also MEIS INDUSTRIES LIMITED and OTHERS vs TWIGA BANKCORP (Misc. Commercial Cause No. 243 of 2015) [2016] TZHC Com D 17."

Since it has been observed above that extension of time is within the Court's discretion, the same still extends a need for the same to have sufficient cause for the Court to exercise its discretionary powers. In this instant application the Applicant has stated that there is an existence of serious illegalities in the records of the Kisumu Resident Magistrates' Court which needs to be revised.

It has also been held in many times that the ground alleging illegality may as well constitute a "good cause" for extension of time. The Court of Appeal in the case of **VIP ENGINEERING AND MARKETING LIMITED VS CITIBANK TANZANIA LIMITED** consolidated **Civil References No. 6,7 and 8 2006 (unreported)** stated that:

"We have already accepted it as established law in this Country that where the point of law in this Country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes "sufficient reason" for extending time.

Among other decisions with the above principle are, ***PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICE VS DIVRAM P. VALAMBIA (1992) TLR 367; LYAMUYA CONSTRUCTION COMPANY LIMITED VS BOARD OF TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, Civil Application No. 02 of 2010.***

From the submissions, the Applicant has stated that there was serious irregularity during the hearing of the matter which led to her right being infringed. Further, the Applicant has also stated on the actions taken to challenge the said decision to show that she has interest in tackling the matter so as justice should be seen to be done.

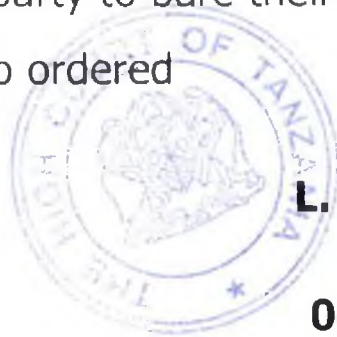
The Applicant states that the previous Application was struck out on **19/8/2020** and by **02/09/2020** this instant application was filed before the Court. For interest of justice, I

find it justifiable even on the accounting of the days done by the Applicant. It is then **therefore from the reasons stated that I grant this application as prayed.**

The Applicant is ordered to file the application for revision **within 14 days** from the date of receiving the copy of this ruling.

Each party to bare their own costs.

It is so ordered



A handwritten signature in blue ink, appearing to read 'L. E. Mgonya'.

L. E. MGONYA

JUDGE

04/06/2021

Court: Ruling delivered in chamber in the presence of Kakula, Advocate for the Respondent and Ms. Msuya RMA this 04th day of June, 2021.



A handwritten signature in blue ink, appearing to read 'L. E. Mgonya'.

L. E. MGONYA

JUDGE

04/06/2021