

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SONGEA**

AT SONGEA

MISCELENEOUS CIVIL APPLICATION NO.17 OF 2020

(Arising from Songea District Court in Civil case No. 06 of 2017)

MOHAMED SAID MOHAMED..... APPLICANT

Versus

HASSAN AHMAD NASSORO LITUNU 1ST RESPONDENT

ASHURA NASSORO LITUNU2ND RESPONDENT

RULING

Date of Last Order: 06/05/2021.

Date of Judgment: 25/05/2021.

BEFORE: S.C. MOSHI, J.

This application is for extension of time to file an application for revision out of time. The application is made under section 14 (1) of the Law of Limitation Act Cap. 89 R.E 2019 and it is supported by an affidavit deposed by Mohamed Said (the applicant). The application was heard ex-parte following non appearance of the respondents on the date when the case was scheduled for hearing.

During hearing of the application, the applicant was represented by Mr. Edson Mbogoro learned advocate. The application was disposed of by way of written submission.

Mr. Mbogoro submitted among other things that, the applicant was prevented by sufficient cause from filing the application for revision within

the time prescribed by the law. He explained the sequence of events for the delay that, in the ruling complained of the trial magistrate noted that the applicant wrote to the court requesting to be joined as a party and the said letter reached the court's registry well before the application was heard. However, due to some unknown reasons it came to the attention of the trial magistrate after parties have been heard but the ruling was yet to be delivered instead the applicant was served with summons to appear on the date for ruling when he could do nothing to reverse anything.

He argued that, thereafter the unrepresented applicant believed that having not been a party to that application he could not challenge the ruling through a judicial procedure but rather administratively by way of a complaint. He wrote a complaint letter to the Deputy Registrar over the matter, the period in which had he made a formal application challenging the ruling it would have been within the time prescribed by law that is 30 days.

He submitted further that, a month later, the applicant after waiting in vein for response from the Deputy registrar, he wrote another letter to the Judge in charge. His complaint was responded to by the Deputy Registrar acting upon the direction of Judge in charge on 13th November

2017 to the effect that as the complaint was judicial in nature any remedy if any, must be pursued through a judicial procedure.

He stated that, within a month from the date the applicant received the said advice, he adhered to it by filing in the district court of Songea an application seeking an extension of time for filing an application for review of the said Ruling of the District Court. The application was granted on 29th November 2018. The applicant filed an application for review which was later on withdrawn as he discovered that review is not open to the person who was not a party to the case. On 15th August 2019 the applicant lodged an application in the High Court for extension of time to file an application for revision which was granted on 15th October 2019. The application was confronted with a preliminary objection to the effect that affidavit accompanying the application was incurably defective for containing matters of legal arguments, options and prayers.

After the said application was struck out the applicant applied for a copy of the said ruling which was availed to him on 22nd December 2020. He lodged this application after six days after being availed by the copy of the said ruling that is on 28th December 2020.

He explained that, the delay between 28th July 2017 when the ruling sought to be revised and 28th December 2020 when this application was initially lodged the delay was on account of the incorrect course of action

taken by the applicant but later on the delay became technical delay which on several occasions have been held that it amounts to sufficient cause warranting the court to grant extension of time. He supported this argument by citing the case of **Mustapha Athumani Nyoni vs. Issa Atthumani Nyoni**, Civil Application No. 486/10 of 2010, Court of Appeal at Iringa (Unreported).

He said that, in the event the application is granted; it is intended to ask the court to be pleased to rectify some manifest errors material to the merits of the case involving injustice, revise the proceedings and make such decision or order as the proceedings and ruling in the District Court were tainted with manifest illegalities. He said that among them are violation of the rules of natural justices, abuse of court process and condonation of illegalities. He cited the case of **Selina Chibago vs Finihas Chibago**, Civil Application No. 182 A of 2007, Court of Appeal at Dar es salaam (Unreported).

The issue for determination, in the light of the applicant's chamber summons, affidavit in support of the application and written submission, is whether the applicant has advanced good cause to convince the court to extend time within which he can lodge an application for revision out of time.

The law requires a party who seeks an extension of time to advance good cause for the court to exercise its discretionary power in extending time or otherwise. What amounts to good cause has not been defined. However, from decided cases, certain factors may be taken into account in considering whether or not the applicant has shown good cause. Amongst the factors to be taken into account as succinctly stated in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) are: -

- (a) *The applicant must account for all the period for 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; and*
- (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."*

I will subject the above authority to the facts in the instant application. The applicant's reasons for the delay are two, the first one is shown in paragraph two to ten, the second one is shown in paragraph eleven. In paragraphs two to ten he averred that;

2. that I affected by the ruling in Songea District Court Misc. Civil Application No. 6 of 2017 delivered on 28-7-2017 in which I was not a party but in which the subject matter was a property located on plot no. 11-12 block "K" Songea municipality which I had lawfully bought from one Mwahija Nassoro Litunu who had since passed away. Copy of the said Ruling is annexed hereto and marked MSM1.

3. Thereafter on 28-8-2017 I wrote a complaint letter to the Deputy Registrar of the High Court of Tanzania Songea zone which was followed by another letter addressed to the Judge in charge on 28-09-2017 who directed that as the complaint was judicial in nature appropriate judicial remedy should be sought by moving the court with competent jurisdiction through judicial procedure. Copy of the complaint letter to the judge in charge and its reply thereto are annexed hereto and marked "MSM 2" collectively.

4. That pursuant to the directives averred above I filled an application for extension of time for filling an application for review of the ruling in misc. civil application No. 6 of 2017. On 29th November 2018 the application was granted.

5. That after filing the application for review pursuant to the leave of extension of time but before its determination by the court I was advised that an application for review cannot be filed by a person who

was not a party in the matter which is sought to be reviewed and his only remedy is to apply for revision. Consequently, I was compelled to withdraw the said application.

6. that on 15th August 2019 I applied for leave of extension of time to file an application for revision of the ruling in Songea District Court Miscellaneous Civil Application No. 6 of 2017. The said leave was duly granted by this honorable court on 15th October 2019 vide its ruling annexed hereto and marked as "MSM3".

7. That pursuant to the said leave of the court as averred in para 6 of this affidavit above, filed an application for revision. On 26th November 2020 this honourable court delivered its ruling by which the application was struck out on the ground that the affidavit accompanying the application was fatally defective. Copy of the said ruling is annexed hereto and marked "MSM4".

8. That on 01st December 2020 I applied for copy of the said ruling. On 22nd December 2020 the court notified me that the copy of the said ruling was ready for collection. Copy of my letter and copy of the court's letter are annexed hereto and marked "MSM5" Collectively.

9. That upon being availed with the ruling of the court I promptly filed this application.

10. That the delay in filling this application was occasioned by the sequence of events as narrated above which I am advised as being technical.

Briefly, the above paragraphs shows that the applicant has been trying to lodge the intended application but his efforts were thwarted because of some legal technicalities i.e mistakes made during those previous applications and administrative steps he took leading to withdrawal and striking out of the applications. It is my view that these constitute sufficient cause for the delay. Reading through the sequence of events, I am also satisfied that the applicant has managed to account for all the days of delay.

In paragraph eleven he alleges illegalities, it reads thus:-

11. The ruling of the District Court which is sought to be revised is tainted with manifest illegalities and hence I am advised that if this application is granted the intended application for revision has overwhelming chances of success hence this application.

As indicated, the applicant is alleging illegalities in the ruling of the District court subject to this application. It is settled law that where an issue of illegality is raised as a reason for applying for extension of time, such reason amounts to good cause. This position was stated in the case of The **Principal Secretary, Ministry of Defence and National**

Service vs. Devram Valambia (1992) TLR 182, Where it was held thus:

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"in our view when the point at issue is one alleging illegality be challenged, the court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right".

Back to the case at hand, the illegalities were pointed out in the submission, I am satisfied that the alleged illegalities suffices for the grant of extension of time

The other reasons as seen in paragraph eleven is that the intended application for revision has overwhelming chance of success, the position of law is well set that, chance of success is not relevant factor by itself because the court in an application for extension of time is not concerned with the merits of the intended application or appeal rather on whether the applicant has shown good cause for the order sought. See the case of **Aziz Mohamed vs. R**, Criminal Application No. 84/07 of 2019 Court of Appeal sitting at Mtwara. Therefore, discussing chances of success will be beyond the power of the court in this application.

In the event, I find that this application is meritorious taking into account the first and the second reasons which relate to technical delay and illegality. I hereby grant it. The applicant should file the intended application for revision within fourteen days from the date of delivery of this ruling.

It is so ordered

Right of Appeal Explained.


S.C. MOSHI

JUDGE

25/05/2021