

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 35 OF 2021

(Arising from judgment in Land Appeal No. 45/2020 delivered by this court on 24th February, 2021)

RACHEL ZEPHANIA APPLICANT

VERSUS

MARY JOSEPH RESPONDENT

RULING

5th & 18th May, 2021

RUMANYIKA, J.:

With respect to judgment and decree dated 24/02/2021 of this court (Ismail, J) the application is for extension of time within which Mary Joseph (the applicant) to apply for review. It is supported by affidavit of Mary Joseph whose contents essentially the applicant adopted on 05/05/2021 during audio teleconferencing.

Unlike the applicant, Rachel Zephania (the respondent) had service of Mr. Kyariga learned counsel. By way of digital plat form I heard the parties through mobile numbers 0752602618 and 0755893823 respectively.

Unusually briefly the applicant just urged the court to consider the facts deposed in the supporting affidavit. That is it.

In reply, but having adopted contents of the counter affidavit, Mr. Kyariga learned counsel submitted that application for review should have been filed within the first thirty (30) days of the impugned decision but counting from 24/02/2021 the applicant was late by 15 (fifteen) days and she assigned no sufficient grounds or give account for each day of the delay leave alone failure to establish grounds for the intended review. (case of **Tanzania Fish Processors Ltd v. Euston K. Ntagalinda**, Civil Application No. 41/08 of 2018 (CA), Unreported. We pray that the application be dismissed this time around with costs the learned counsel further contended.

The bottom line and central issue is whether the applicant has assigned sufficient grounds for extension of time. On first attempt and within the 1st three days having had lodged an application for review of even number on 23/03/2021 online, but due to network faults therefore on time bar basis it was returned the applicant's 3rd attempt failed and Mr. Kyariga learned counsel did not even attempt to dispute this fact, the applicant therefore may have been militant enough but for the technical delay which one constituted a sufficient ground for extension of time (case

of **The National Housing Corporation v. Etienes Hotel**, Civil Application No. 10 of 2005 (CA) unreported).

However, not only according to the settled law granting or refusal of extension of time was within domain of and discretion of the court, but also, and without running risks of jumping into merits of the intended application for review prematurely, without one giving a single hint of the ground (s) for the would be application, quietly though and rightly Mr. Kyariga learned counsel argued that the court never simply assumed grounds in this case that there would be one worthy reviewing much as also, unless with respect to the impugned decision appeal process was barred by the law or something, review proceedings was no alternative of or an appeal in disguise (case of **South Esso v. The Peoples Bank of Zanzibar and another** (2001) TLR 43)

The out of place application is struck out with costs. Should there be any clerical or mathematical errors, by way of a mere administrative letter the applicant may now wish to move the Deputy Registrar to cause the judgment and decree corrected/rectified by the judge.

It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

10/05/2021

The ruling delivered under my hand and seal of the court in chambers this 18/05/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

18/05/2021