

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC LAND APPLICATION NO. 40 OF 2021

(Arising from Land Appeal No. 1 of 2019)

SALOME PASCHARYAPPLICANT

VERSUS

ATHUMAN MABUNDUGULU MKWABIRESPONDENT

RULING

2nd & 30th June, 2021

RUMANYIKA, J.:

Brought under Sections 14 (1) and 95 of the LLA and Civil Procedure Chapters 89 and 33 respectively, with respect to judgment and decree of this court dated 14th September, 2020 the application is for extension of time within which, against Athuman Mabundugulu Mkwabi (the respondent) Salome Paschary (the applicant) to lodge an application for review. It is supported by affidavit of Dioniz John Mwasi whose contents Mr. Yusuph M. learned counsel for the applicant adopted on 2/6/2021 during audio teleconference hearing. Ms. S. Sangawe learned counsel appeared for the respondent. I therefore on the digital platform heard them through mobile numbers 0756005870 and 0767991966 respectively.

Mr. Yusuf learned counsel in a nutshell he submitted that neither Mr. D. Mtete, advocate nor anybody had, according to records for the said Misc. Land Appeal actually been instructed or otherwise engaged by the present applicant. That the point of illegality sufficiently constituted a ground for extension of time (case of the **Principal Secretary Ministry of Defence and National Service v. Devram Valambia** (1992) TLR 387 much as therefore in the said appeal the applicant was not fairly heard leave alone being heard.

Questioned by the court for clarity, Mr. Yusuf learned counsel submitted that all was due to the counsel's misrepresentation hence illegality.

Having adopted contents of the counter affidavit, Ms. Sangawe learned counsel submitted that the application ran short of merits because the reasons for extension of time advanced it wasn't sufficient that in the absence of supplementary affidavit of the advocate now denounced by the applicant the applicant was duly notified for the appeal and heard therefore he should not have blamed one for the consequential orders. We humbly submit and pray with costs. The lady learned counsel further contended.

The pivotal issue is whether during hearing of the appeal the applicant was aware and represented by Mr. D. Mtete, advocate. At least on behalf of the present applicant, unsuccessfully though the latter is on record having had actively paused, appeared and he argued the appeal.

In her back the appeal may have had been so determined but the said advocate not engaged, or, by any means one instructed by the applicant yes, but not only the applicant did not bother even to venture stating what would have been the counsel's motive / interest, but also did not tell why, with effect from 15/1/2019 he had not, if at all, applied for execution of the decree until in April, 2021 say two years later upon one succeeding on appeal when the respondent served her a notice for execution such degree of acquiescence in my considered opinion it constituted a clear indication that the unexplained delay meant that the applicant was aware of the appeal and for that matter Mr. D. Mtete learned counsel appeared duly instructed by her much as it was settled law that court proceedings were serious documents which therefore with regard to the issue at hand they reflected what actually had transpired in court the same therefore could not just like that be impeached. I think the applicant's allegations would have been of assistance if; **(1)** for whatever

reasons the name of the advocate it hadn't been on the role any more **(2)** in support of the applicant's complaints the applicant had the advocate's supplementary affidavit **(3)** that following the judgment and decree the applicant had applied for and was granted execution order.

It follows therefore that if anything, the advocate's act it wasn't worth the name a point of illegality. Moreover, had it been established and proved, the applicant's concern may have constituted a ground for institution of ethical proceedings against Mr. D. Mtete but with greatest respect this is no forum.

The devoid of merits application is dismissed with costs. It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

08/06/2021

The ruling is delivered under my hand and seal of the court in chambers this 30/06/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

30/06/2021