

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT DODOMA

MISCELLANEOUS CRIMINAL APPLICATION NO. 48 OF 2021

(Originating from Misc. Land Application No. 130/2019 and Land Appeal No. 67/2017 of the High Court of Tanzania at Dodoma)

MOHAMED RAMADHANAPPLICANT

VERSUS

1. ISEKE VILLAGE COUNCIL

2. GIDION MGHAMBA

3. ERASTO KYUHA

.....RESPONDENTS

Date of last Order: 01/11/2021

Date of Ruling: 23/11/2021

RULING

KAGOMBA, J

MOHAMED RAMADHAN (the “applicant”) has filed in this Court application for orders of extension of time for him to file an application for review of the Ruling of this Court in Misc. Application No. 130 of 2019. The applicant also applies for costs and other orders and /or relief this Court may deem fit and /or just to grant. The respondents are Iseke Village Council, Gidion Mghamba and Erasto Kyuha as first, second third respondents respectively.

The Application is made under section 14(1) of **the Law of Limitation Act, [Cap 189 R.E 2019]** and section 95 of the **Civil Procedure Code, [Cap 33 R. E 2019]**. The Applicant has also filed a supporting affidavit in which he states the reasons justifying the grant of the orders sought in his application.

A brief background of the matter between the parties is that the applicant had sued the respondents at Isike Ward Tribunal but withdrew the matter and filed it in Singida DLHT claiming ownership of a parcel of land estimated to be eight (8) acres. He alleged that the suit land which is situated at Iseke village in Singida Region, was granted to him by his grandfather one Athumani Nkungu in 1994. He further alleged that when he wanted to develop it in 2021, he was stopped by the respondents. The suit land was allocated by the first respondent to the second and third respondents in 1996. The Singida DLHT gave its judgment and decree in favour of the applicant who was declared to be the lawful owner of the suit land.

The respondents appealed to this Court vide Land Appeal No. 67 of 2017 and were successful to have the decision of the Singida DLHT overturned. The tribunal decision was vacated and set aside. The applicant was aggrieved by the decision of this Court (Hon. Mlacha, J) and thus filed his application seeking leave of the Court to file an appeal to the Court of Appeal. Apparently, the applicant did not attach a Notice of appeal in contravention of the mandatory requirement of the law under Rule 83(1) of the **Court of Appeal Rules, 2009**. The provision requires a person who desire to file an appeal to the Court of Appeal to lodge a written Notice of Appeal to the Court

of Appeal. Accordingly, the Application for leave was dismissed for want of attachment of the said Notice of Appeal.

The applicant filed an application for review of the Court's decision that dismissed his leave application. Apparently, the application for review was filed out of time and immediately was withdrawn by the applicant on 3/5/2021 when the same came before this Court (Hon. Mansoor, J). Withdrawal of the application was, according to the applicant, intended to first apply for extension of time to file the same. This application is therefore in Court for this purpose.

The main justification for the applicant's delays to file his application for review in time is explained in paragraph 7 of his affidavit. The applicant states that from the time Misc. Land Application No. 130/2019 was rejected by this Court (Hon. Masaju, J), he was struggling for legal assistance to prepare the necessary documents to be filed in this Court. The rest of the paragraphs in the affidavit provides for background history of the matter and not the justification for the delay.

In their counter affidavit, the respondents have strongly disputed the contents of paragraph 7 of the affidavit aforesaid and called for proof thereof. They also disputed other substantive contents of the affidavit.

During hearing of the application both sides appeared unrepresented. The applicant told the Court that he remembers to have filed a notice of intention to appeal on 3/12/2019 but he was not asked to attach or produce a copy of the original notice of appeal.

He further told the Court that he applied to this Court for review, an application which was placed before Hon. Mansoor, J. He said the honourable Judge advised him to first apply for extension of time to file his application for review. He therefore prayed for order of this Court to extend time for review as per reasons adduced in his affidavit.

Mr. Abeli Yona Yohana, the Chairman of Iseke Village Council for the first respondents, vehemently opposed the application. He submitted that the same should be dismissed for being devoid of merit.

Mr. Yohana submitted further that the Ruling of the Court, made by Hon. Masaju, J, considered the principles of Court procedures and was a correct decision. He further submitted that after the Ruling the applicant was given 21 days to appeal but he did not appeal within time. He gave a history of the case and how it was determined at various levels from the Ward Tribunal to the High Court. Mr. Yohana further, submitted that the notice of appeal which the Court found missing was neither in the Court file nor in the file of the applicant's advocate and said, the applicant's advocate conceded and prayed the matter to proceed according to the law. Mr. Yohana had thus prayed for dismissal of the application.

Mr. Gidion Mghamba, the second respondent also prayed for the dismissal of the application, with costs. He said the decision by Hon. Masaju, J was correct.

Mr. Erasto Kyuha, the third respondent concurred with the submission of the first respondent. He said the time for the applicant to file his appeal had expired. He said he represents a women group that deals with tree- planting activities in the village. He said it is becoming a burden for them to contribute fare for the third respondent to come to Court to represent them.

In his rejoinder, the applicant reiterated his submission in chief. He said that all the time he was coming to the Court he was not told that the Notice of intention to appeal was missing. He said he has the notice, for which he paid court fee and his application is being filed pursuant to the advice of Hon. Mansoor, J. He has now attached everything that is required, thus prayed the Court to grant his application.

The provision of Section 14(1) of the **Law of limitation Act, [Cap 189 R.E 2019]** under which this application is preferred provides:

*“14(1) Notwithstanding the provisions of this Act, the Court may **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than the application for execution of a decree, and an application for such extension may be made wither before or after the expiry of the period of limitation prescribed for such appeal or application’.* [Emphasis mine]

Under the guidance of the above provision of the law, the issue is whether the applicant has adduced any reasonable or sufficient cause to justify the grant of this application after his delay to file his application for review in time.

As I have stated earlier, the ground justifying the applicant's delay is stated in paragraph 7 of his affidavit. The applicant states that after the decision of the Court which dismissed his application for leave (Hon. Masaju, J) he "was struggling for legal assistance to prepare the necessary documents to be filed in the High Court". It's now the duty of this Court to determine if the stated reason constitutes a reasonable or sufficient cause. The respondents have called for proof of the allegation that the delay was caused by the applicants struggle for legal assistance.

In determining the issue before the Court, I shall be guided by the decision of the Court of Appeal in **HENRY MUYANGA VS TTCL**, Civil Application No. 8 of 2011 (unreported) where the Court of Appeal stated:

"... it has been held that, in considering an application for extension of time the Court may take into consideration such factors as the length of delay, the reason for delay, the chance of success on the intended appeal (in this case it's an application) and the degree of prejudice that the respondent may suffer if the application is not granted"

Applying those parameters to the application in hand, the Court finds that from 1/02/2021, when a Drawn Order of the Ruling of the Court in Misc. Land Application No. 130 of 2019 that dismissed the applicant's application for leave to appeal was issued to the applicant as per paragraph 5 of the affidavit, to 16/7/2021 when the applicant filed this application for extension of time it is more than six months. The Court is aware that between the issuance of Drawn Order and the filing of this application, the applicant had filed Misc. Land Application NO. 14 of 2021 on 3/3/2021 praying the Court

"to extended time for filing an application for leave to appeal to the Court of Appeal and thereafter for filing the Memorandum of Appeal to the Court of Appeal, out of time", among other orders. This application was placed before Hon. Mansoor, J who heard the same on 3/05/2021 whereby the applicant prayed to withdraw it. The Court accordingly marked that application withdrawn, with no orders as to costs.

Subsequent to the withdrawal of the application for extension of time, the applicant filed this application. As stated earlier, the applicant prays for extension of time, not to appeal, but for review of the Ruling of this Court (Hon. Masaju, J). Even if we were to go by the date of withdrawal of the application No. 14/2021, since 3/5/2021 when it was withdrawn to 16/7/2021 when this application was filed, it's two and half months. By any standard this is a long period of time.

Under paragraph 7 of the applicant's affidavit, which is purported to be drawn by Dutu Faustine Chebwa (Advocates), the applicant justifies the delay by "Struggling for legal assistance to prepare necessary documents" to be filed in this Court. He relates this delay from the date the Court rejected his application for leave to appeal to the Court of Appeal. However, the ruling dismissing the application was delivered on 11/11/2021, and its Drawn order was issued to the applicant on 1/2/2021 being five (5) months and half to the date of this application. This is too long a time to be justified by "struggle to get legal assistance". After all, there is no any proof, as demanded by the respondents, showing that the applicant was struggling to get legal assistance to draft legal documents during that period of delay.

I have perused the chamber application and the supporting affidavit before the Court. The affidavit is purported to be drawn by Dutu Faustine Chebwa, Advocate. However, the said advocate did not sign to show that he actually drew the affidavit as alleged. Under such circumstances, the only plausible conclusion the Court can draw is that there has been a long and unjustified delay for filing the application for review, in time.

In examining the chance of success of the intended application for review, the applicant has stated in paragraph 15 of his affidavit that he has been advised of an error in "the Ruling and Decree of the High Court in Misc. Land Application NO. 130 of 2019" which amounted to illegality. Apparently, there is no "Decree" made under Misc. Land Application No. 130 of 2019, that being an application for leave to appeal out of time. The applicant, could be presumably referring to Drawn Order and not a Decree. He did not hint what type of error is in the Ruling or drawn order that amounted to illegality.

I would for once be tempted to grant the extension of time sought solely on ground of illegality even though no further disclosure has been made by the applicant on the said illegality. I am mindful of the decision in PRINCIPAL SECRETARY, MINISTRY OF DEFENCE AND NATIONAL SERVICES V. DURAM P. VALAMBHIA [1992] TLR 186 where the Court of Appeal stated that,

"When the point at issue is one alleging illegality of the decision being 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”.

Reading the above Court of Appeal decision in light of the factors which the Court may consider in granting applications for extension of time, as stated in **HENRY MUYAGA** (SUPRA), particularly the chance of success on the intended applications, it is imperative that the applicant should show, albeit briefly the point of illegality he is alleging to exist.

He has not done so. As such it shall not be enough to say, as the applicant stated in the affidavit, that; “The dismissal order on the face of the Ruling and Decree (sic) in Misc. Land Application No. 130 of 2019 amounted [to] illegality.”

The purpose of the affidavit is to disclose the grounds upon which one relies in persuading the Court to grant his application. Disclosure of those facts is absolutely paramount to enable the Court make a meaningful consideration of the prayers made. Non-disclosure of important details or facts in a supporting affidavit leave the Court with no option but to treat the same as not pleaded at all. Accordingly, the illegality mentioned in paragraph 16 of the supporting affidavit, which was not elaborated, is thus treated as not pleaded.

In **LYAMUYA CONSTRUCTION CO. LTD Vs BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA**, Civil Application No. 2 of 2010, (unreported) the Court of Appeal observed that the application for extension

of time should not be granted to whoever demonstrates that there is a point of law to be addressed. The Court added that such a point of law must be of sufficient importance as it was emphasized in the Valambhias's case (supra) and added that,

".. it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process".

As I have already stated, in this case the applicant has opted not to mention a point of law he seeks to be addressed. The consequence, as I have said, is to treat the allegation of illegality as if it was not pleaded at all.

The last factor for consideration as mentioned in the case of **HENRY MUYAGA** (supra), is the degree of prejudice the opposite party will suffer if the application is granted. There is no doubt that the respondents have been held from peaceful utilization of the land in dispute whose ownership has so far been declared in their favour. They need to enjoy the fruit of the case they won. Granting of this application will further delay them to develop and utilize the land in dispute.

It was also stated by the second respondent that continuation of this dispute is coming at a cost to the respondents in terms of fare and disturbances to the group of women growers who use the land currently.

Notwithstanding the above prejudices, the Court would still extend time to enable the applicant file his application if there were sufficient cause to do so. Since the delay to file application for review has been too long, being five (5) months and twelve (12) days to be precise, the applicant has no body but himself to blame for seating on his right.

In the case of **THE REGISTERED TRUSTEES OF ARCHDIOCESE OF DAR ES SALAAM V. THE CHAIRMAN BUNJU VILLAGE GOVERNMENT**, Civil Application No. 147 of 2006, the Court of Appeal in attempting to define the terms "sufficient cause" referred to the case of **DAPHINE PARRY V. MURRAY ALEXANDER CARSON (1963) EA 546** where the Court in the latter case quoted from a book titled **Law of Limitation** 5th edition by Rustomji, who had this caution to the courts:

"Though the Courts should no doubt give a liberal interpretation to the words "sufficient cause", its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the Court must guard itself against the danger of being led by sympathy, and the appeal should be dismissed as time barred, even at the risk of injustice and hardship to the appellant".

In the matter before this Court, I am called to determine whether there is sufficient cause to extend time for the applicant to file his application for review out of time. There is no dispute that there is a claim of ownership over the land in dispute between the parties. However, the applicant has not

shown any sufficient cause for the application to be allowed. He has not been able to justify the long delay of over five (5) months, and could not even give a hint on the point of illegality he alleged to have found in the Ruling and Drawn Order of the Court which he seeks to be ultimately reviewed.

Under such circumstances, I find no merit in the application and hereby dismiss it accordingly. No order as to costs.

It is so ordered.




ABDI S. KAGOMBA
JUDGE
23/11/2021