

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT MOSHI

MISC. LAND CASE NO. 47 OF 2021

(Arising from Misc. Civil Application No. 20 of 2020 of the High Court of Tanzania Moshi District Registry)

THADEI PHILIP KWEKA (As Representative of Anna Makanga)

..... **APPLICANT**

VERSUS

GRACE WOISO..... RESPONDENT

RULING

16/3/2022 & 10/5/2022

SIMFUKWE, J.

The applicant Thadei Philip Kweka as Representative of Anna Makanga filed this application under **section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2019** praying for orders that:

1. This Honourable Court be pleased to extend time within which to file an application for leave to appeal to the Court of Appeal out of time.
2. This Honourable Court be pleased to grant costs of this application and;
3. Any other relief(s) that this Honourable Court deems fit and just to be granted.



The application was brought by way of chamber summons taken out on the grounds set forth in the affidavit of the applicant. The respondent filed her counter affidavit in opposition of the application.

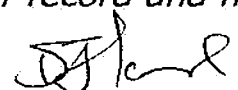
Both parties were unrepresented, thus the application was ordered to be argued by way of written submissions.

In his affidavit and written submission, the applicant advanced two reasons for the delay. The first reason is delay of more than 120 days to obtain copy of the ruling of Misc. Application No. 20 of 2020 which was requested on 04th May 2021. The second reason was said to be old age of the applicant Anna Makanga who lives in the village and could not find her representative herein in time to represent her. In addition, it was submitted for the applicant that more time was lost due to complications in preparations and registration of the power of attorney and electronic filing.

It was submitted further that the impugned ruling was in respect of an application for revision seeking correction of errors which were made by the District Court of Moshi. That, the judgment was cited as Civil Case No. 19/1995 and the decree was cited as Civil Case No. 19/1994 showing that the decree was issued before the case was heard.

In support of his submission, the applicant cited the case of **Fatma Hussein Sharif vs. Alikhan Abdallah (As Administrator of the estate of Sauda Abdallah) & 3 others, Civil Appeal No. 536/17 of 2017** in which the Court of Appeal of Tanzania at page 13 observed that:

"It should be noted that, for illegality to be considered as a good cause for extending time, it has to be on point of law of sufficient importance and it must be apparent on the face of record and not

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one that would be discovered by a long drawn argument or process."

From the above authority, the applicant stated that the act of issuance of decree before the case was heard amounts to illegality that is apparent on the face of the record.

Apart from the above alleged illegality, the applicant also submitted that the intended appeal raises fundamental points of law for the development of law, to wit:

- a. Lack of owner's consent in disposing of the property (sic)
- b. Granting execution order to unknown owner.
- c. Lack of analysis of the evidence adduced

The applicant was of the view that, the above issues can only be adjudicated if the applicant is accorded an opportunity to appear before a full bench and argue. To buttress his argument, reference was made to the case of **Samson Kishoka Gabba vs. Charles Kingongo Gabba [1990] TLR 133** in which it was held that:

"i. In determining whether or not to allow an application for leave to appeal out of time the Court has to consider the reason for the delay as well as the likelihood..... of the intended appeal

ii. N/A"

It was concluded that issues to be determined by the Court of Appeal clearly indicate that success of the intended appeal is obvious. Thus, the applicant prayed that this application be granted with costs.

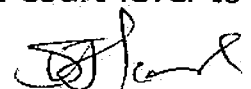
Opposing the application, the respondent first adopted her counter affidavit and submitted among other things that he has not been served

with notice of intention to appeal or letter applying for documents to date. That, it is trite law that where an application for leave is necessary, it shall be made after the notice of appeal has been lodged and served upon the other party.

It was stated further by the respondent that this application was filed 8 months after delivery of ruling in Misc. Civil Application No. 20 of 2020 without any compelling and sufficient reasons. That, it is trite law that the applicant must advance sufficient grounds for extension of time and must account for every day delayed.

Apart from failure to account for the delay, the respondent contended that the applicant also failed to state the whereabouts of the previous representative who was appointed, ordained and nominated by Anna Makanga in Misc. Civil Application No. 20 of 2020 and whether the said previous Special Power of Attorney was either revoked or still in use. Moreover, the respondent challenged the authenticity of the said Special Power of Attorney to the effect that the same was not signed by the Donor Anna Makanga. In addition, its jurat of attestation is ambiguous as to whether the deponent was identified by the advocate himself or was personally known by the advocate. Also, the rubber stamp of registration of the said Special Power of Attorney has been affixed on a separate sheet while there was a space at the bottom of the attestation. The respondent was of the view that the documents were tantamount to have been fabricated.

It was submitted further for the respondent that there has been series of endless applications of this kind since 1995 between Anna Makanga and the respondent. In all those applications from the District court level to



the Court of Appeal, the respondent has been declared a successful party. That, Anna Makanga has never been seen or appeared. Those representatives of Anna Makanga have been using alternative windows and doors by using false documents. The respondent questioned a letter dated 4/5/2021 annexed to the supplementary affidavit in which the signature of Anna Makanga is suspected to have been forged. In his supplementary affidavit the representative of Anna Makanga deponed at paragraph 4 that he was the one who wrote the said letter while the same is purported to have been signed by Anna Makanga. The respondent invited this court to give consideration of long-lasting litigation between the parties as representatives of the applicant are causing hardship to the respondent who has been travelling from Shinyanga to Moshi. That, whenever a bill of costs is drawn the representatives of the applicant cannot be traced. At the same time, their documents are being attested by advocates of Morogoro and Tabora for reasons best known to them. The respondent submitted in the interest of justice that this litigation should come to an end.

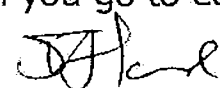
In the light of the above submission together with the anomalies found on the documents presented by the applicant Thadei Philip Kweka, the respondent implored this court to make a finding and hold that the applicant's application for extension of time within which to file an application for leave to appeal to the Court of Appeal out of time is baseless and without merit. She prayed that the application be dismissed with costs.

It is a common law principle that when you go to equity you must go with clean hands. In this matter the applicant Anna Makanga is entitled to representation as her constitutional right. However, her right must be

enjoyed in compliance to the laws and prescribed procedures. From the outset, the letter dated 4/5/2021 and a Special Power of Attorney dated 19/9/2021 are to the effect that the documents were not signed by the applicant Anna Makanga. The Special Power Attorney has a passport size picture of the donor without being signed by her. Without wasting the precious time of this court, with respect it is a considered finding of this court that the documents have been fabricated as rightly submitted by the respondent.

Without prejudice to the anomalies on the documents of the applicant, the representative of the applicant has alleged in his affidavit that he was supplied with the copy of the ruling on 17/9/2021 after he had requested for the same on 4/05/2021. The instant application was filed on 17/11/2021 on the reason that it was difficult for Anna Makanga to find Thadei Philipi Kweka to represent her in this application under the power of attorney. That, it took time to prepare the power of attorney since the applicant was not financially fit to pay an advocate. The alleged power of attorney as indicated herein above was signed on 19/9/2021, two days after being supplied with the copy of the ruling. The same was registered on 24/9/2021. Thus, the allegation of the donee Mr. Thadei Philip Kweka that it was difficult for the applicant Anna Makanga to find him are clear lies. In other words, reasons for the delay advanced by Mr. Kweka are contradictory and are not worth to be believed.

Apart from that, on the basis of the anomalies on part of the documents of the applicant, it goes without saying that this application is unfounded and frivolous. I do not think any prudent court of law or tribunal could grant this application as it clearly shows that most of its supporting documents are fabricated. As I have already said, when you go to equity

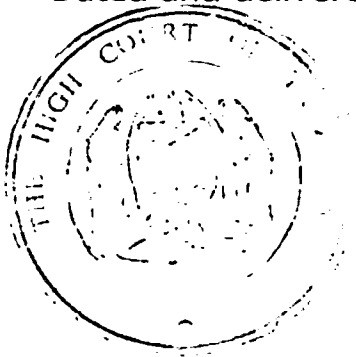


you must go with clean hands. Otherwise, the dispute between the parties is prolonged without any justification and with respect, the same has no room in our vision of Timely Justice for All.

In the upshot, this application is found to be devoid of any merit. I therefore dismiss it with costs.

It is so ordered.

Dated and delivered at Moshi, this 10th day of May 2022.




S.H. Simfukwe

Judge

10/05/2022