

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 191 OF 2021

(Arlsing from Misc. Civil Application No. 652 of 2016)

MSAE INVESTMENT CO. LTD APPLICANT

VERSUS

COMMISSIONER FOR LANDS 1ST RESPONDENT

THE REGISTRAR OF TITLES 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

22nd, & 25th February, 2021

ISMAIL, J.

Extension of time is sought to enable the applicant apply for review out of time. The review is against the decision of the Court that arose from Misc. Civil Application No. 652 of 2016. These proceedings, which were essentially for execution of the drawn order, culminated in the dismissal which arose from the fact that the said application was not accompanied by a decree that established ownership of the suit premises.

Supporting the application is an affidavit of Wilbard Mtenga, the applicant's managing director, setting out grounds on which the application is based. The sole ground that serves as a vessel for the applicant's quest is illegality that he alleges was committed when the applicant contended that a decree was not attached to the application for execution.

The application is facing an opposition from the respondent who, through their joint counter-affidavit, dispute the applicant's averments. Ms. Grace Lupondo, the deponent of the counter-affidavit, has denied that an illegality exists in the decision sought to be challenged, as it is clear that attachment of a copy of the decree is a requirement in an application for execution.

With respect to the delay in taking action, the respondents averred that the applicant has not accounted for each day of delay from the date the decision was delivered to the date on which the instant application was filed.

At the hearing of the application, the applicant was represented by Mr. Abraham Senguji, learned advocate, whilst the respondents were represented by Ms. Grace Lupondo, learned state attorney.

In his laconic submission, Mr. Senguji acknowledged that extension of time is granted where its applicant adduces sufficient reasons. In this

respect, he had two reasons. Firstly, that the applicant was supplied with a copy of the ruling after the lapse of 30 days set for filing an application for review. Mr. Senguji argued that an application for review would not be filed without the said documents. Secondly, that the ruling is tainted with illegality which is premised on the Court's view that the execution application was not accompanied by a copy of the drawn order. Mr. Senguji argued that extension of time is granted whenever illegality is cited as a ground for challenging the impugned decision.

For her part, Ms. Luondo began by submitting that the court's discretion to grant extension of time must be exercised judiciously. She argued that what amounts to sufficient cause was restated in the decision of ***Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, CAT-Civil Application No. 10 of 2010 (unreported). Learned attorney argued that, whereas applications for review ought to be filed within 30 days, the same was filed after 110 days, leaving 48 days unaccounted for. She took the view that failure to account for the days of delay was contrary to the legal position as accentuated in the ***Finca (T) Ltd & Another v. Boniface Mwalukisa***, CAT-Civil Application No. 589/12 of 2018 (unreported).

Regarding illegality, the view held by Ms. Lupondo is that illegality can only serve as a ground if it is apparent on the face of the record, as was held in ***Hamisi Mohamed v. Mtumwa Moshi***, CAT-Civil Application No. 407/17 of 2019 (unreported). She contended that what the applicant considers as an illegality will require long drawn arguments to discover it. Overall, she argued that the applicant has failed to account for the 48-day delay; the delay is inordinate; and that the applicant has exhibited apathy and lack of diligence on his part. She urged the Court to dismiss the application.

In his brief rejoinder, Mr. Senguji maintained that the application was dismissed erroneously because the decree was attached to the application. By contending that the same was not attached, the Court indulged in an illegality. He reiterated his submission in chief by insisting that whenever illegality is cited as a ground the question of length of time ceases to be of any consequence.

The obvious question arising from the parties' contentions is whether the application is meritorious.

True to the counsel's view, grant of extension of time is discretionary, and the Court can only exercise such discretion judiciously if the party seeking to have the remedy adduces sufficient cause for the delay. Some

of the preconditions for such grant were underscored in the famous case of ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA*** (supra), and they include the following:

"(a) The applicant must account for all the period of 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 he intends to take.

(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 illegality of the decision sought to be challenged."

In the instant matter, the applicant has advanced two grounds. One is the delay in being furnished a copy of the decision, and the other is illegality in the impugned decision.

My entry point in this discussion is an evaluation of illegality as a ground. The trite law is that illegality can only constitute good cause if the same is of sufficient importance. This was discussed in the ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA*** (supra), wherein it was held:

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my

view, be said that in **Valambhia's case**, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.**"[Emphasis added]

See also: **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185; **Paulo Juma v. Diesel & Autoelectric Services Ltd & 2 Others**, CAT-Civil Application No. 54 of 2007; **VIP Engineering and Marketing Limited & 2 Others v. Citibank Tanzania Limited**, CAT-Consolidated References Nos. 6, 7 and 6 of 2006 (both unreported).

Of significance here is that, once this ground is successfully pleaded, the other criteria, such as length of delay, or accounting for every single day of delay become redundant. What is cited as an illegality in this case is the Court's decision to dismiss the application for execution, on the ground that a copy of the said decree was not attached to the application and that the Court did not consider that the same attached to the application. From

this contention the question is whether this constitutes an illegality and, if so, whether the same is of any sufficient importance.

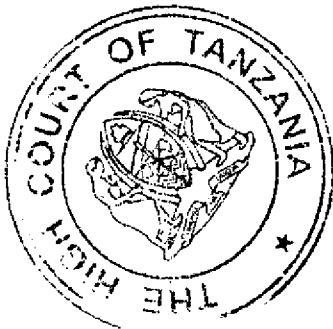
It is a known fact that attachment of a copy of the decision sought to be executed is a legal requirement whose breach renders the execution proceedings untenable. In this case, the argument is that the Court erred when it held that the same was not appended while in fact it was. Would such holding amount to an illegality? Black's Law Dictionary, 8th edition, 1st Reprint, 2004, at page 763, defines illegality to mean "an act that is not authorized by law. It is the state of not being legally authorized." In my considered view, this would also include taking an erroneous position of the law. If the applicant's contention is anything to go by, then the Court's decision was a case of an error of law which amounts to an illegality.

As to whether the said illegality is in the mould of illegalities that may be considered as of sufficient importance and apparent on the face of the record, my answer to this is in the affirmative. It is quite glaring and would not need any long drawn argument or process to discover. In my unflustered view, this is a form of illegality that may be cited as the basis for extension of time in the instant matter. Having accepted this as a ground, I do not consider the other grounds as of any more significance to this matter. I choose not to consider it.

In sum, I hold that this application has met the legal threshold set for the grant of extension of time and, accordingly, I grant it. The applicant is granted ten (10) days within which to file her application for review. Costs to be in the cause.

It is so ordered.

DATED at **DAR ES SALAAM** this 25th day of February, 2022.




M.K. ISMAIL
JUDGE