

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS CIVIL APPLICATION NO. 69 OF 2020

(Arising from the decision of this Court in Land Reference No. 1 of 2019, A.J. Mambi, J)

BETWEEN

PETRO ROBERT MYAVILWA APPLICANT

VERSUS

ABEL JOSEPH MWALIBETI 1ST RESPONDENT

RAHIM A. MCHALIKWAO 2ND RESPONDENT

ERIKA MYAVILWA 3RD RESPONDENT

ZERA MYAVILWA 4TH RESPONDENT

RULING

A. A. MBAGWA, J.

This is an application for extension of time within which to appeal against the decision of this Court in Land Reference No. 1 of 2019 delivered on 10th October, 2019. The application is preferred by way of chamber summons made under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019]. The chamber summons is supported by an affidavit sworn by the applicant on 7th December, 2020.

The background of the application as can be construed from affidavit and record is that, in 2018 the respondents applied to the taxing master of this Court for taxation of costs emanating from the order of the High Court

of Tanzania made in the Bill of Costs No. 18 of 2018 between the applicant and respondents.

Upon hearing of the Bill of Costs No. 18 of 2018, the taxing master ordered the applicant to pay Tshs. 9,635,000/= to the respondents. The applicant was aggrieved by the decision of the taxing master hence he preferred Land Reference No. 1 of 2019 in which the High Court, (A.J Mambi, J) reduced the amount to Tshs. 7,635,000/=.

Again, the applicant was aggrieved by the decision of this Court (A. J. Mambi, J.) in Land Reference No. 1 of 2019 delivered October, 2019 as such he filed a notice of appeal against the said decision. However, in due process the appellant was wrongly advised by his advocate John Oweg to prefer the revision instead of appeal. When the matter was called on for hearing before the Court of Appeal of Tanzania on 20th November, 2020, the applicant withdrew the said application for revision upon realizing that he took the wrong course.

Now, the applicant is intending to pursue an appeal against the decision of this Court in Land Reference No. 1 of 2019 but he is out of statutory time. Thus, he filed this application at hand.

In rebuttal, the respondents filed a joint counter affidavit sworn by their counsel, Chapa Alfredy to refute the applicant's averments.

The application was argued by way of written submission whereby the applicant appeared in person whilst the respondents were represented by Chapa Alfredy, the learned advocate.

In his submission, the applicant adopted the contents of his affidavit and elucidated that the reasons for delay was misguidance from his advocate John Oweg. He submitted that being unrepresented before the High Court he relied on his advocate advice to file revision believing that it was the proper advice.

The applicant further submitted that he was aware that ignorance of law is not an excuse but since he relied on professional advice believing to have been properly advised, that amounted to a sufficient reason for extension of time. He thus prayed the application to be allowed with costs.

In response, the respondents counsel, Chapa Alfredy prayed to adopt their counter affidavit to form part of their written submission and further pointed out that although it is discretionary power of the court to grant extension of time, it must be satisfied that there is sufficient cause. He bolstered his argument with the cases of **Yusufu Same & Hawa Dada vs Hadija Yusufu**, Civil Appeal No. 1 of 2002 and **Daniel Kivambe vs Rahma Liganga**, Misc. Land Case Application No. 415 of 2017.

He further argued that, the allegation by the applicant that his advocate John Oweg advised him to file the revision application is a hearsay in that

there is no affidavit sworn by John Oweg to the said effect. He added that what was advanced by the applicant is seriously lack of due diligence to pursue his application and cannot be said as a reason for this Court to extend time. He invited this Court to follow the decision of the Court of Appeal in **Abdallah S. Ndope and Others vs National Housing Corporation**, Civil Application No. 82 of 2011 CAT at Dar es salaam (unreported).

Mr. Chapa argued that the applicant's affidavit did not demonstrate any good cause to warrant extension of time. He cemented his submission by the case of **Addija Ramadhani (Binti Pazi) vs Sylvester W. Mkama**, Civil Application No. 13/17/2018 CAT at Dar es salaam.

Mr. Chapa prayed this Court to dismiss the application with costs.

The applicant did not file any rejoinder.

I have considerably appraised the affidavit, counter affidavit, attached documents and rival submissions made by both parties to find out whether the application has merit. The core issue here is whether the applicant has advanced sufficient reason.

It is a common ground that there is no decisive definition of what a sufficient/good cause is. However, in determining the good cause, courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that

each party is likely to suffer, the conduct of the parties, whether the applicant was diligent and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwesa & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported).

In this application, the sole reason the applicant advanced is that he was misguided by his advocate John Oweg to file an application for revision instead of appeal. Nonetheless, as rightly submitted by the respondents' counsel, the said allegation by the applicant remains a hearsay as he did not file an affidavit sworn by John Oweg to substantiate the particular fact.


The law requires that an affidavit which mentions another person, the said person must swear an affidavit as well. Failure to do so it remains a hearsay. See the case of **Sabena Techincs Dar Limited vs Michael J. Luwunzu**, Civil Application No. 451/18 of 2020 CAT at Dar es salaam)

From the above observations, I find that the applicant has not demonstrated sufficient reasons for this court to grant the prayed extension of time. Consequently, I dismiss the application with costs.

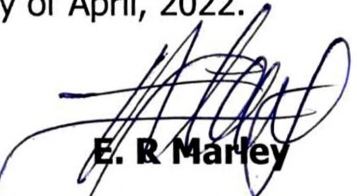
It is so ordered.

Right of appeal is explained.




A. A. Mbagwa
Judge
27/04/2022

Court: Ruling delivered before E.R. Marley, Ag Deputy Registrar in presence of the applicant and Pendo Lukumay, learned advocate for the respondents this 27th day of April, 2022.


E. R. Marley
Ag Deputy Registrar
27/04/2022