

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISCELLANEOUS CIVIL APPLICATION NO. 46 OF 2021

(Originating from H/C Misc. Civil Application No. 230 of 2015 and Arbitration Award dated 6th June 2015)

BETWEEN

IMMANUEL NIVOKAVIT KOMBE 1ST APPLICANT

JIBU GROUP COMPANY 2ND APPLICANT

VERSUS

SHAMMAH MINISTRY NETWORKS RESPONDENT

RULING

14/2/2022 & 18/7/2022

ROBERT, J:-

The applicants in this matter seek an order of this Court for extension of time to file an application for review of the decree in Miscellaneous Civil Application No. 230 of 2015 originating from the Arbitral award dated 6th June, 2015 out of the prescribed time. The application is supported by an

affidavit sworn by the first Applicant, Immanuel Nivokat Kombe who is the Managing Director of the second applicant.

The applicants in this application were Respondents in Miscellaneous Civil Application No. 230 of 2015 filed successfully before this Court for execution of the Arbitral award made on 6th June, 2015 having been filed in Court on 13th November, 2015 and adopted as Judgment of the Court.

The second applicant is a company dealing with microfinance business. Sometimes in 2014 the second applicant's business started to collapse and the respondent herein was one of the clients. In the year 2012 and 2013 the applicants owed the respondent TZS 21,000,000/= from which they paid the respondent a total of TZS 20,000,000/= and remained with TZS 21,000,000/= as outstanding debt. Having failed to repay the outstanding amount the respondent herein initiated arbitration proceedings forcing the applicants to repay the money advanced to them jointly and or separately. The Arbitrator awarded TZS 112,513,600/= as the amount to be repaid back to the respondent. Consequently, the respondent filed Misc. Civil Application No. 230 of 2015 at this Court seeking the decision and decree of this Court on the arbitral award made by the Arbitrator on 6th June, 2015. After the decision and decree of this Court, the applicants sought to challenge the

Court's decision by way of review, however, being outside the prescribed time to file an application for review, the applicants preferred this application seeking extension of time to file an application for review out of time.

At the request of parties, the Court allowed this application to be disposed of by filing written submissions whereby the applicants' submissions were prepared and filed by Mr. Emmanuel Aaron Shao, learned counsel for the applicants whereas the Respondents submissions were prepared and filed by the party's representative.

Submitting in support of this application, the applicants argued that as a matter of general principle it is in the discretion of the Court to grant extension of time and such discretion must be exercised according to the rules of reason and justice. He made reference to the guidance provided in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, CAT, Civil Application No. 2 of 2010** and based his argument in support of this application on the guidelines for extension of time as established in the cited case to the effect that:-

- (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 that he intends to take.*
- (d) *If the Court feels that there are sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

Submitting in line with the cited guidelines, he argued that, for the applicants to account for each day of delay is next to impossible because the delay is inordinate in the eyes of the law. However, he maintained that, in line to guidelines (c) and (d) above, the applicants were diligent due to the factual surrounding as indicated in the sworn affidavit which he maintained that amounts to sufficient ground. He argued further that, the applicants never rested, they opened a number of cases and others are still pending in Court just to find the solution to all the cases for and against them only that they pursued their reliefs from a wrong avenue while time kept on running.

He submitted further that, there are sufficient reasons such as existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged. He maintained that, the award procured is problematic, erroneous and improper to the core. He maintained that, the respondent had no locus standi to file arbitration proceedings. To support his argument, he made reference to the case of **Lujuna Shubi Balonzi,**

**Senior vs The Registered Trustees of Chama Cha Mapinduzi, 1996,
TLR 203.**

He submitted that the cause of delay as narrated in the applicants' affidavit are sufficient and further that, the delay was not caused by the applicants' negligence, carelessness or inadvertence. Based on the submissions made, he implored the Court to grant the prayers sought.

In response, the respondent argued that, as admitted by the applicants, the delay in this matter is too inordinate for one to give an account for each day of delay. He maintained that, after all these years since 2014 to date, some of the records are no longer in place and the first applicant is fabricating fake receipts to avoid responsibility to refund the money he received. He maintained that the first two authorities cited by the applicants are hopelessly violated by the applicants.

On the third principle established in the case of **Lyamuya Construction Company Ltd** (cited above), that is, there should be diligence by the applicant in the prosecution of the action he intends to take, he maintained that, the applicant in this matter has always been in the Court corridors filing hundreds of applications by using different names

interchangeably including those of his family members to raise various claims. He implored the Court to put an end to these claims after 8 years now. He cited the case of **Everist and Others vs Magai and another (1916) TLR 142** where the Court observed that: It is in the interest of justice that litigation must have finality, therefore, review should be resorted to only in exceptional circumstances”.

On allegations of excessive decretal amount, he respondent that the this is an afterthought and a delaying tactic as the amount indicated was agreed upon by both parties in the case.

He maintained that this application lacks sufficient reasons of importance as most of the claims raised by the applicants were determined by the Court in various applications filed by the applicants.

On allegations that the respondent lacks locus standi as the respondent’s Board of Trustees passed a resolution to deposit money with the applicants then to be withdrawn for construction of the church and further that, the said Board appointed and authorized Rev. Lawrence Mapunda and Nindi Ludwing to make follow up on the matter. He maintained that, the allegations that the respondent should have been represented by the Board of Trustees has no any legal justification since the respondent has

legal capacity to sue or be sued. He therefore implored the Court to dismiss this application for lack of merit.

Having heard submissions from both parties in this application, the Court is now confronted with one question for determination, that is, whether the applicants have adduced sufficient reasons for this Court to exercise its discretion to extend time for the applicants to file an application for review.

It is not disputed that this is a long pending matter and the delay in filing the intended application is too inordinate for the applicants to account for each day of delay. However, the law requires the applicants to account for the said delay otherwise the whole exercise of applying for extension of time lacks meaning if one cannot justify the reasons for such lateness.

I have looked at the affidavit filed in support of this application in search of the reasons for the delay in filing the intended application within the prescribed time unsuccessfully. The entire affidavit is a narration about the applicants and the challenges in their business including the money owed to the respondent and the difficulties in repayment as well as what happened in the arbitration proceedings. It is obvious that most of the reasons

submitted in the applicants' submissions such as the arguments on locus standi, respondent's lack of business license for money lending business, the evaluation of the attached houses by the Government valuer and the applicant's lack of carelessness are mere submissions from the learned counsel which are neither pleadings nor evidence and therefore cannot be considered as grounds for support of this application. This court needs evidence to make a determination on this matter.

In the circumstances, this Court finds and holds that the applicants have failed to furnish sufficient reasons to warrant extension of time to file the intended application for review. Accordingly, this application is dismissed with costs for lack of merit.

It is so ordered.



A handwritten signature in blue ink, appearing to read "K.N. Robert", is written over a vertical line that extends from the signature down to the typed name below.

K.N. ROBERT
JUDGE
18/7/2022