

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS CIVIL APPLICATION NO. 22 OF 2021

(C/O Misc. Civil Application No 18 of 2018, Civil Appeal No. 3 of 2014 originating from
Civil Case No. 21 of 2000 of District Court of Sumbawanga)

MORIS S/O MBILINYI 1st APPLICANT

HAIBE M. ABDALA 2nd APPLICANT

VERSUS

CRDB BANK LIMITED 1st RESPONDENT

SALUM AMOUR 2nd RESPONDENT

COSTANTINO NZUMI 3rd RESPONDENT

MRS. THERESIA NZUMI 4th RESPONDENT

RULING

Date: 08/07 & 18/08/2022

NKWABI, J.:

Under the provisions of section 14 (1) of the Law of Limitation Act, Cap 89 R.E. 2019 the applicants are seeking for extension of time within which to file an application for review of the Ruling of this Court in Misc. Civil Application No. 18 of 2018 dated 28th November, 2018. In addition, the applicants are praying for costs of the application and any other relief this Honourable Court may deem fit and just to grant.

There are affidavits for and against this application. I ordered this application be argued by way of written submissions. Submissions were filed.

In submission in chief, the counsel for the applicants submitted that this Court, made a generalized holding that,

"the applicants are granted extension of time to file their appeal out of time."

That is contrary to prayers sought in chamber summons hence this application for extension of time for the applicants to file their application for review for corrections of the said order in Misc. Civil Application No. 18 of 2018 where they had sought two prayers which are:

- (a) Extension of time to lodge notice of appeal to the Court of Appeal out of time.
- (b) Extension of time to lodge leave to appeal to the Court of Appeal out of time.

Mr. Rwekaza contended that the delay to file an application for review was not deliberate and not caused by the negligence of the applicants rather it was due to the fact that the applicants were prosecuting other cases which

were Misc. Application No. 26 of 2018 but the said application was refused thus Civil Application No. 283/09 of 2020 to the Court of Appeal as a second bite which was struck out for irregularities found in order of Misc. Civil Application No. 18 of 2018. When the applicants wanted to file a review of the order in Misc. Civil Application No. 18 of 2018 they found that it was time barred. But they attributed the delay, to a technical delay referring to the case of **Victor Rweyemamu Binamungu v. Geoffrey Kabaka & Another**, Civil Application No. 602/08 of 2017, CAT where it was observed that:

"... The Applicant first applied for revision which was however struck out on 4th December 2017 on account of time limit. This period from the date of the decision intended to be revised to the date of striking out Civil Application for revision, is what has acquired the name of technical delay which cannot be blamed on the applicant."

Reference was also made to the case of **Salim Lakhan & 2 Others v. Ishafaque Shabir Yusufali (as administrator of the estate of the late Shabir Yusufali)**, Civil Application No. 455 of 2019 CAT where it was said:

"... With those principles in mind I consider the period before 7th October, 2019 as constituting what has come to be known as technical delay and now part of our jurisprudence ..."

Mr. Rwekaza too pointed out that another reason for extension of time is the issue of irregularities in this Court granted a prayer that was not sought and this court had no jurisdiction to grant a prayer of filing an appeal out of time. He cited **Principal Secretary, Ministry of Defence & National Service v. Dervan Vallambia** [1992] T.L.R. 189 that:

"Where the issue of illegality and irregularity in the decision sought to be impugned is raised, the Court is required to extend the time even if it means that the Applicant has failed to account for the delay."

Mr. Rwekaza, thus, pressed upon this Court to find that the applicants have managed to establish sufficient cause to warrant this Court to grant the application for extension of time and prayers in the chamber summons be granted.

The counsel for the 3rd respondent (Mr. Budodi) replied the submission of the counsel for the applicants that the first ground is misconceived and attributed to gross-negligence, as they ought to have detected the error and applied for review on time. Secondly the Civil application No. 283/09 of 2020 was withdrawn at the incidence of the applicants as indicated in the Order of the Court of Appeal thus:

"After a brief dialogue with the Court, Ms. Marunda rose to inform the Court that her clients were no longer interested in pursuing the application. She prayed ... for an order marking the application withdrawn with no order as to costs ... Accordingly, we mark the application withdrawn."

That the delay is for three years which is inordinate citing **Damari Bijinja v. Innocent Singano**, Misc. Civil Application No. 30 of 2021 HC and a technical delay is inexcusable as per **William Shija v. Fortunatus Masha**, [1992] T.L.R. 213.

Mr. Budodi too contended that the principle of irregularity is misconceived and is totally distinguished. He prayed this application be dismissed.

On his side, Mr. Baraka Mbwilo, learned counsel for the 1st and 2nd respondents distinguished an error and illegality urging that this Court committed an error and not an illegality. He also sought to distinguish the decisions cited by the counsel for the applicants. The principle of illegality is maintained by a higher court. He insisted that the applicants have failed to account for each day of the delay and have manifested gross negligence. He prayed the application be dismissed for lack of merits.

In rejoinder, Ms. Maria Kaluse insisted that it was the Court of Appeal which noted the irregularity and it is not that the counsel of the applicants who prayed to withdraw the application. She urged parties should not be punished for mistakes done by the court. She also asserted, the review will cure the said anomalies and errors.

She then insisted the delay is not inordinate and it is a technical one. She cited **Fortunatus Masha v. William Shija & Another** [1997] TLR 154 and claimed that they were diligent prosecuting various applications. She insisted that the ruling of this Court is tainted with illegalities.

I have considered this application and I agree, the illegality is apparent on the face of the record. That is what even the Court of Appeal found and that is why it said, "*after a brief dialogue ...*," it is when the counsel for the applicant's withdrew the application in the Court of Appeal. In my view, this application is saved by the decision in **Omari R. Ibrahim v Ndege Commercial Services Ltd**, Civil Application No. 83/01 of 2020 CAT (unreported):

"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 in VALAMBIA'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 points of law must be of sufficient importance and, I would add that must also be apparent on the face of records, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

That said, I find that the applicants have demonstrated sufficient cause for extension of time and the sufficient cause they have demonstrated is the illegality in the ruling of this Court which is apparent on the face of the record. I allow the application as it has merits. Extension of time to file review is granted. The applicants have to file their intended application for review within 14 days of this ruling. Each party to bear their own costs.

It is so ordered.

DATED at **SUMBAWANGA** this 18th day of August, 2022.




J. F. NKWABI

JUDGE