

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM REGISTRY
AT DAR ES SALAAM
MISCELLANEOUS APPLICATION NO. 17 OF 2022

SAEED YESLAM SAEED.....APPLICANT

VERSUS

MOHAMED OMARI
(Administrator of estate of the late
SALIM OMARI)RESPONDENT

Date of last Order: 19/04/2022
Date of the Ruling: 16/05/2022

R U L I N G

MGONYA, J.

Before me is an application for extension of time within which the Applicant herein can file Revision against the decision of the Resident Magistrate Court of Dar es Salaam at Kisutu in **Civil Case No. 376 of 2006**. The Application has been preferred under **Section 14 (1) of the Law of Limitation Act Cap. 89 [R. E. 2002]**.

The Application is supported by an affidavit affirmed by **SAEED YESLAM SAEED**, the Applicant herein.

On the date of hearing, the Applicant was represented by Mr. George Ngemela learned Counsel whereas the Respondent was represented by Mr. Ambrose Nkwera, learned Advocate.

In his oral submission in support of the Application, Advocate Ngemela for Applicant submitted that the instant application is for extension of time in which the Applicant is seeking for an order of the court to extend time so that the Applicant can file Revision against the *Exparte* Judgment of the RM's Court of Dar es Salaam at Kisutu in **Civil Case No. 376 of 2006**.

Submitting further, the Counsel averred that the Applicant was the Administrator of the estate of the deceased Late **Yassin Sahed Bin Kulawi** who died on **4/2/2008** at Hindu Mandal Hospital. The Late Yasin Sahed Bin Kulawi was sued by Mohamed Omari (Administrator of the Late Salim Omari) in **CIVIL CASE No. 376/2006** at the RM's Court of Dar es Salaam at Kisutu. However, in the cause of proceedings, the Defendant the Late Yassin Sahed Bin Kulam passed away.

Submitting for the extension of time application, the counsel admitted that, for the court to give extension of time, the court must have had sufficient reasons for extension of time; of which in the Applicant's application for the extension of time, the Counsel declared to have only one sufficient reason. The reason given is that, the *Exparte* Judgment is pointed with **ILLIGALITIES** as

shown in the Applicant's Affidavit in Paragraph II. The Counsel informed the court that, where a point of Law at issue is illegality, time is always extended even where there is an inordinate delay. In support of this assertion, Mr. Ngemela cited the case of ***KALUNGA & CO. ADVOCATES VS. NATIONAL BANK OF COMMERCE Civil Application No. 124/2005*** at Page 240, and the case of ***TANZANIA PORTLAND CEMENT COMPANY LIMITED VS. HADIJA KUZIWA Civil Application No. 437/01 of 2017*** at Page 9 of the Ruling where extension of time was granted basing on point of illegality.

The Counsel said, illegality being a sufficient cause, it amounts that the court can grant extension of time so that the alleged illegalities be determined by the court. The Counsel also admitted to know the fact that, for the Applicant to be granted with extension of time, he has to count to each day of delay. However, the Counsel said that there are some exception to the said rule, one being where there is a point of law at issue, particularly on question of illegality; where the extension of time can be extended by the court even where there is an inordinate delay.

From the above submission, the Counsel prayed the application be granted as prayed.

In response of the Applicant's submission, Counsel Nkwera for the Respondent narrated four main conditions for the court to

consider in granting the extension of time upon request. The same are said to be

- (1) There must be length of delay,
- (2) There must be reason of delay,
- (3) The degree of prejudice, and
- (4) Chances of succeeding that Application.

From the Applicant's submission and above conditions, Mr. Nkwera is of the view that the Applicant has not satisfied the court to be granted extension of time as prayed. The reason behind being that the Applicant herein has not exhausted the four conditions which were made so as the court can grant the Application.

Further, that the Applicant also has not demonstrated the good course for extension of time as he has not managed to account for each day of delay from the time he was aware of the existence of the *Exparte* Judgment where according to his Affidavit he said that he was aware of the existence of the Judgment where he was served with the warrant of arrest issued on 12/9/2018 as said in his paragraph 5 of his Affidavit. The counsel said, counting from 2018 up to 11/1/2022 it is four (4) years that has elapsed since the Applicant was aware of the *Exparte* Judgment.

The counsel cited the case of **WAMBELE MTUMWA SHAHAME VS. MOHAMED HAMISI Civil Reference No. 8 of**

2016; Court of Appeal of Tanzania at Dar es Salaam where at pages 9 and 13, it was said that delay even of the single day must be accounted for. It was observed that:

"Delay even of a single day has to be accounted for, otherwise there would be no point of hearing rules prescribing period within which certain steps have to be taken."

Responding to the point of **Illegality**, the counsel submitted that, a court document is a very serious document which cannot be impeached. On this, the counsel referred this court to the case of **KALFAN SUDI VS ABIEZA CHICHILI 1998 TLR Page 527**. Further referring to paragraph 3 of the *Ex parte* Judgment at hand, it has been revealed that the Magistrate gave the chance to the concerned relatives to come forward and advance their objection if any, but no one appeared. Cementing on this point, the counsel emphasizes that, in fact that is what happened as per the above cited case where the court record was said to have always represent what happened in the proceedings.

In conclusion, Mr. Nkwera was of the view that, if the Applicant be the Administrator of the deceased as from 2012 when the Judgment was pronounced and having the fact that the Applicant was aware of the Judgment, then points of illegality holds no water at all.

From the above explanation, the Respondent's counsel submitted that, the Affidavit accompanied the Chamber Summons and the submission in that response has not advanced sufficient reasons to move this Honorable Court to give the sought orders by the Applicant. Hence the Respondent prayed that the Application be dismissed with costs for not advancing sufficient reasons.

Upon reading the submissions of the Applicant, the affidavit information and counter affidavit and having considered the relevant laws, I have observed that the main issue for consideration is whether the Applicant has shown sufficient cause for this Court to exercise its discretionary power to extend the time within which to file Revision against the decision in Civil Case no. 376 of 2006.

Certainly, it is in the discretion of the Court to grant extension of time. But that discretion must be judicial, and so it must be exercised according to the rules of reasoning and justice, and not according to private opinion or arbitrarily.

Indeed, in order for the Court to exercise its discretionary powers and grant an extension of time within which to take necessary steps, the Court must be satisfied that the Applicant has advanced sufficient reasons to account for the delay to take the necessary steps.

The Applicant must account for all the period of delay; meaning that:

- (a) The delay should not be inordinate;**
- (b) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and**
- (c) If the court feels that there are other 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;**

As it was held in the case of **LYAMUYA CONSTRUCTION COMPANY LTD VS. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA Civil Application No. 2 of 2010 (Unreported)**.

I have noted that the reasons for delay to take the necessary steps have been explained in paragraph four of the Applicant's affidavit and in his oral submission in chief through his Advocate, the learned Counsel Mr. Ngemera. The same has been contested by the Respondent in his counter affidavit particularly in paragraph six as well as in his oral submission by his Advocate Mr. Nkwera.

In my opinion, I find no justifiable reason advanced by the Applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to file Revision as prayed. The contents of paragraph six of the counter affidavit

attached with the Ruling in respect of Ruling in Civil Application **No. 199 of 2018** evidenced that it is not factual that the Applicant herein was not aware at all with the matter which involved his late father. The above mentioned Ruling has clearly demonstrated that fact.

After I have ruled out on the knowledge of the matter between the parties above, the remaining issue is to the effect that, whether the Applicant exercised the reasonable cause in making this application.

The records reveal that, this is the 11th year since the Ruling in issue intended for Revision was delivered, way back in **2011**. This is quite a long time that needs substantive explanation to show as to why the Applicant did not file the intended Revision on time; regardless the submission that in place of any irregularity, extension of time is inevitable.

It is trite law that where there is in action/ delay on the part of the Applicant there ought to be some kind of explanation or material to enable the court to exercise its discretion.

In the case of ***ALIMRAN INVESTMENT LTD VS. PRINTPACK TANZANIA AND OTHERS (Unreported)*** it was held that:

“Applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation”.

Unfortunately this has not been the case in this Application. I have to declare that since this kind of Application is on court's discretion though that discretion has to be exercised judicially, I prefer to stick on the principles of extension of time particularly to the fact that the Applicant has to be prompt and have to account for the time of delay. Looking at the irregularities, one has to ask himself, when did the Applicant come to know about the said irregularities? Parties have to understand that, the case contains two sides. That is why there is limitation to litigations in order to protect both parties' rights. Under the circumstances, time is of the utmost importance. One cannot presume that for all that time the adverse party will remain stagnant in making any progress to the subject matter to the case. To entertain such grave intermission of time in litigations, is to create endless litigations of which are likely to obstruct parties' rights.

In this Application, the Applicant did not show diligence in making a follow up of his case. He had a duty of making a follow up of his case and make any tangible decision promptly so as cannot affect other party's situations.

Having said so, **the Application is accordingly dismissed for want of merits with costs.**

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

16/05/2022

COURT: Ruling delivered in the presence of Mr. George Ngemela, Advocate for Applicant, the Respondent in person and Mr. Richard RMA on 16th May, 2022.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

23/11/2018