IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 105 OF 2021

(Originating from the order of the Kinondoni District Court in Civil Case No. 88 of 2018 dated 24th July 2019)

ATLAS SECONDARY SCHOOL.....APPLICANT

VERSUS

DEODATUS MWEMEZI.....RESPONDENT

RULING

14/2/2022 and 19/8/2022

LALTAIKA, J.

The applicant is seeking extension of time to file Revision against the decision of District Court of Kinondoni in Civil case No. 88 of 2018 dated 24th July 2019. The application is brought under section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019 and section 95 of the Civil Procedure Code, Cap 33 R.E 2019). The application is supported by an affidavit deponed by Condradus Felix, counsel for the applicant. Reasons for the delay are articulated at paragraphs 3, 4, 5 and 6 of his affidavit in support of the application. The respondent on the other hand, has filed a counter affidavit to refuse the contents of applicant's affidavit.

A brief history of this matter is that, the respondent Deodatus William, sued the appellant at Kinondoni District Court claiming a total amount of TZS 20,428,500/= after the trial court, determined the matter, the trial court entered a consent judgment. Dissatisfied with the decision of Kinondoni District Court, the applicant decided to file an application for revision but he discovered that he was out of time. He therefore, applied in this court for extension of time so that he could file the revision.

On the hearing date Conrad Felix, learned Advocate appeared for the applicant while the respondent was represented by Thomas Brash, learned Advocate. They opted for oral submissions.

In his submission the applicant argued that this court has unfettered discretion to extend time for institution of an appeal or application upon advancement of sufficient cause for the delay. He averred that there has never been a hard and fast rule on what amounts to sufficient cause as each case is determined on its own facts. To bolster his argument, the learned counsel referred this court to the case of **Regional Manager Tanroads Kagera versus Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007** (unreported).

Mr. Felix argued further that, from the reasons averred in the affidavit in support of the application for extension of time, the main ground is the claim of illegality of the impugned decision. He averred that it was illegal for the DC of Kinondoni to entertain civil disputes of which its pecuniary value is below 30 million Tanzania Shillings.

It is Mr. Felix's submission that the decision of the trial court is illegal because it contravenes section 18(1) AIII of the Magistrate Courts Act (hence forth MCA), Cap 11 R.E 2019 which categorically states that

Primary Court shall have and exercise jurisdiction in all proceedings of civil nature for the recovery of any civil debt arising out of contract if the value of the subject matter does not exceed 30 million shillings. The learned counsel emphasized that it it was illegal for the trial court to entertain the matter because the claim was 22 million Tanzanian Shillings.

Mr. Felix is of the firm view that claim for illegality of a decision by the trial court is one of the special circumstances constituting sufficient reason for extension of time. To support this argument, the learned counsel invited this court to the case of **Principle Secretary Ministry of Defense and National Service versus Devram Valambia** [1992] TLR 182 and the case of **Kalunga and Company Advocates versus National Bank of Commerce Ltd** [2006] TLR 235.

The learned counsel for the applicant averred further that denying the applicant an opportunity to challenge the alleged illegality would amount to permitting an illegal decision to stand. Mr. Felix forcefully argued that it is the practice of this court that once illegality of the decision is alleged courts grant extension of time so as to ascertain the point and if the alleged illegality is established a higher court takes appropriate measures to put the matter and the records right.

In reply, counsel for the respondent submitted that the parties in the Civil Case No. 88 of 2018 were Deodatus William Mwemezi versus Atlas Mark Group (T) Limited T/A Atlass School. Looking at the applicant who is before this court and the respondent thereto, the learned counsel contended, they are two different parties. Mr. Brash insisted that there had never been any judgment covering the applicant (Atlass Secondary School) versus Deodatus Mwemezi. He opined that this court would not

be in the position to revise a judgment which does not exist and therefore this application is misplaced.

It is Mr. Brash's submission further that, for a person to file an application there must be some conditions. First, that person should have capacity to sue or be sued. Second, an applicant should state expressly, in the affidavit that the applicant has interest on the matter and should also satisfy the court that the decision has a direct effect to the applicant who was not a party to the original suit.

It is the learned counsel's considered view that, for any application for extension of time to be granted, two conditions must be fulfilled: One, there are good grounds for extension of time. Two, the grounds should be sufficient. He emphasized that the instant application has been filed after 20 months and that there was no single paragraph in the affidavit in support of the application giving the reason as to why the applicant didn't file the application for revision or extension of time within a reasonable period.

In a brief rejoinder, counsel for the applicant chose to focus on the argument as to whether Atlass Secondary School and Atlass Mark Group(T) Ltd were one and the same person. The learned counsel averred that on the 30th day of November 2021 counsel for the respondent raised that concern and he assured the court that those two names mean one person. He emphasized that the difference was just a "typing error". Mr. Felix appealed this court to consider such a typing error in the light of overriding objective principle and grant the prayer.

Having dispassionately considered submissions by both counsels, I have the following deliberations to make. It is a settled position of the law

that in applications for extension of time the applicant must show that there is sufficient reason/good cause for the delay. This was held in the case of **The International Airline of the United Arab Emirates V. Nassor Nassor, Civil Application No. 569/01 of 2019 CAT** (unreported). Where at page 4 the Court stated;

> *"It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time."*

Apart from showing sufficient cause, illegality of the decision sought is also a reason for the court to exercise its discretionary power to grant extension of time. This position of the law was developed in the case of **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and Liquidator of Tri- Telecommunication (T) Ltd v. Citibank of Tanzania Limited,** Consolidated References No. 6,7 and 8 of 2006 (unreported) where it was held that:

> *"It is settled law that, a claim of illegality of the challenged decision, constitutes sufficient reasons for extension of time…….regardless of whether or not a reasonable explanation has been given by the applicant……"*

According to paragraph 5 and 6 of applicant's affidavit, the consent settlement order issued by Kinondoni District Court presided over by Honourable Kiriwa, RM was based on a judgment tainted with illegality because the court had no jurisdiction to entertain the case. As alluded to above, prayer for extension of time can be granted upon showing sufficient cause, but the grant or otherwise is purely court discretion upon

being satisfied with the reasons stated by the applicant. See **Rahisi Juma Nanyanje Vs. Saiba Sai,** Misc. Civil Application No. 18 of 2019.

The applicant might have met all the criteria described above. Indeed, the delay may have been occasioned by good intentions and the consent judgement arrived at upon illegality stemming from lack of pecuniary jurisdiction. **However, premised on the principle that two wrongs cannot make a right this application is bound to fail**. Assuming that the trial court had erred in law and fact as forcefully submitted by the learned counsel for the applicant, how can I go ahead and allow an application for revision from a stranger?

In spite of the eloquent submission by Mr. Brash on the need to ascertain the legal status of Atlas Secondary school and that it was not a party to the suit at the trial court, learned counsel for the applicant Mr. Felix only paid lip service to this fundamental question in our adjectival law. Is this a tactic to delay implementation of the consent judgment? Could it be that the applicant is bringing to this court a vexatious application without knowledge of the real parties to the suit and subsequent consent judgement? What prevented the learned counsel for the applicant from indicating, albeit in passing, in his sworn affidavit the interest of the current applicant in the matter? Is it note the role of a lawyer to promote amicable settlement of disputes in the community?

As I observed the learned counsel for the applicant's demeanor during oral submissions, I could not help but stretch my imagination to a scenario where a young lawyer like him is actively engaged in (and even devising means) for endless litigation. This is totally against the principles of our Constitution that the learned counsel chose to seek refuge from.

The fact that the parties had reached consensus should haver been a cause for celebration to the learned lawyer.

I could write on and on. However, to keep this ruling short enough to convey the message intended, I cannot resist the inclination to comment briefly on Mr. Felix's interpretation of a "typing error". For clarity as correctly submitted by Mr. Brash, the parties in the Civil Case No. 88 of 2018 were **Deodatus William Mwemezi versus Atlas Mark Group(T) Limited T/A Atlass School.** The learned counsel for the applicant Mr. Felix wants to make this court believe that variation between **Atlas Mark Group (T) Limited T/A Atlass School** and the current applicant **Atlas Secondary School** is merely a typing error. With respect, this court is not prepared to accept such an apparently illogical argument as the same would be laying a ground for absurdity and perpetuating endless litigation.

The Dictionary meaning of the phrase typing error is "…*an error made while using a keyboard to write something*." (See **Collins English Dictionary** Online Edition)

From the above definition a typing error could be in the form of an addition of the letter "S" in the name Atlas to read "Atlass". Going beyond that would be condoning illegality. On how much of a typing error can be tolerated, the Court of Appeal of Tanzania in **Mr. Wilfred Lucas Tarimo and 3 Others Vs. The Grand Alliance Ltd** Civil Application No 22 of 2014 proffered thus:

> *"Typing error may be accepted if it is from the spelling of a word and not in a specific number of a section or Rule of the Court."*

It does not take much thought to realize that the so called "typing error" purported by the learned counsel for the applicant goes beyond the tolerable threshold described above.

All said and done, this application is hereby struck out for being incompetent. To promote the spirit of consensus reached before this seemingly vexatious application was filed in this court, I make no order as to costs. Each party to bear its own costs.

E.I. LALTAIKA

JUDGE
19/8/2022