

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 44 OF 2022

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE ORDERS OF CERTIORARI,
MANDAMUS AND PROHIBITION AGAINST THE RESPONDENTS

AND

IN THE MATTER OF CHALLENGING THE DECISION OF THE MINISTER FOR
AGRICULTURAL, DELIVERED ON 25TH FEBRUARY 2020:

AND

IN THE MATTER CHALLENGING THE DECISION OF THE REGISTRAR FOR COOPERATIVE
SOCIETIES, DELIVERED ON 10TH APRIL 2020

BETWEEN

YUDA MORATHA.....1ST APPLICANT

EUSTELA KASTULI.....2ND APPLICANT

MARIA LOHAY.....3RD APPLICANT

VERSUS

BOARD OF DIRECTORS

AYALABE SACCOS LIMITED.....1ST RESPONDENT

THE REGISTRAR OF

COOPERATIVE SOCIETIES.....2ND REPENDENT

MINISTER FOR AGRICULTURAL.....3RD RESPONDENT

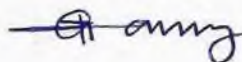
THE ATTORNEY GENERAL.....4TH RESPONDENT

Date: 07/10/2022

BARTHY, J

RULING


The applicants preferred the instant application under section 14 (1) of the Law of limitation Act Cap 89 R.E 2019 and section 2 (3) of the Judicature and Application of Laws Act, (Cap 358 R.E 2019); Section 18



(1) and 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 R.E 2019. The gist of the application is as hereunder;

- a) *That, this Honourable Court be pleased to grant an order for extension of time to file an application for leave on the part of the Applicants to file an application for certiorari to quash and set aside the decision of the 2nd respondent (Registrar of Cooperative Society) and 3^d Respondent (Minister of Agriculture).*
- b) *That, this Honourable Court be pleased to grant an order for extension of time to file an application for leave on the part of the Applicants to file an application for Mandamus to compel the 2nd Respondent (Registrar of Cooperative Society) and 3^d Respondent (Minister of Agriculture) to allow the Applicants herein to resume their duties as members of board of AYALABE SACCOS LIMITED.*
- c) *That, this Honourable Court be pleased to grant an order for extension of time to file an application for Leave on the part of the Applicants to file an application for prohibition to prohibit the 1st, 2nd and 3^d Respondents from interfering the Applicant' duties as board members of AYALEBE SACCOS LIMITED.*
- d) *Costs of the application.*
- e) *Any other Order or Orders that this Honourable Court may deem just and equitable to grant.*

During the hearing of this application, the applicants were represented by Mr. Paschal Peter, learned counsel whereas Ms. Zamaradi Johannes, learned state attorney represented the second, third and fourth Respondents, the first respondent was fending for herself. The application proceeded by way of written submissions.



Supporting the application, counsel for the applicant prayed to adopt their chamber summons supported with an affidavit to be part of their submission.

Mr. Peter had submitted that this application follows the application that was withdrawn so that the leave can be obtained first. The reason for the said withdrawal was for the fact that the matter was not yet referred to the registrar of the Cooperative society who is the second respondent.

However, the second respondent issued them with the notice of surcharge calling them to defend themselves against the allegation of embezzlement of fund from Ayalabe Saccoss.

He went on to state that, the allegation was illegal on the face of records as the applicant had sought of this remedy before lodging the application. He cited the case of **John Paul Yusuph v. the Republic**, Criminal Appeal No. 58 of 2017 (CAT-Unreported) to support his arguments.

The second reasons adduced by the counsel for the applicant to move this court to grant their prayer is that, there is overwhelming chance to succeed as there was no criminal proceedings instituted against the applicants. But the respondents decided to terminate the applicants without proving the allegation that they stole Tsh. 410,000,000/=. At the end, based on those reasons, he prayed to this court to grant their application.

The first respondent objected the application. She submitted that the applicants failed to submit reasons for the delay as stipulated in the case of **Lyamuya Construction Company Limited v. The Board of Registered Trustee of Young Women's Christian Association of**



Tanzania, Civil Case No. 20 of 2010 (Unreported). Thus, lacks of reasons for delay makes the application unjustified and becomes unattained.

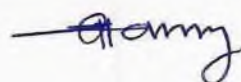
As for the issue of illegality, it was his submission that the act of withdrawing the first application does not amount to illegality as this application has nothing to do with the withdrawn application. He concluded by praying for the application to be dismissed with costs.

On the other hand, Ms. Johannes the counsel for second, third and fourth respondent also resisted the application. She submitted that the applicants failed to account for delay since the last application was struck out by the court for being pre-maturely filed on 22/04/2021.

In addition to that, she contended that even their affidavit supporting the application did not indicate clearly reasons for their delay. She cited the cases of **Elias Kahimba Tibenderana v. Inspector General of Police & The Hon. Attorney General**, Civil Application No. 388 of 2020 (CAT-Unreported) and **The Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** [1992] TLR 387 to support her arguments.

She submitted further that, the issue of illegality to constitute sufficient cause for extension of time it must be apparent on the face of record. However, the issue of illegality was not featured in their affidavit supporting the application to constitute good cause.

She went on to state that, illegality must be direct to the decision they want to challenge and not from the application which was withdrawn by the court for being prematurely filed. The same was deliberated in the case of **Alphonse Mlekia v. Samwel Ligamba**, Misc. Land Application



No. 45 of 2020 (HC-Unreported). To conclude she prayed for the application to be dismissed with costs.

The applicants did not file any rejoinder with respect to the reply submissions made by the respondents.

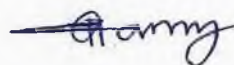
Having considered the rival submission of the parties and CMA records, the only issue for determination is;

Whether the applicant advanced sufficient reasons to justify the delay to file the intended application.

With respect to the application at hand in relation to our issue at hand, the applicants are seeking to this court for an extension of time to file an application for leave to file an application for judicial review.

The position of the law in regard to this type of application is clear that where any party is seeking for an extension of time, he is required to advance sufficient reasons in the affidavit for the court to consider and allow such application. The similar stance was decided by the Court of Appeal of Tanzania in the case of **Finca (T) Limited and Another vs Boniface Mwalukisa**, [2019] TLR 312 where it was held:

*"It is settled that where extension of time is sought, the applicant will be granted, **upon demonstrating sufficient cause for the delay**. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur."* [Emphasis is supplied].



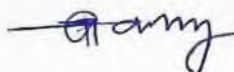
Based on the cited authority, in any application for extension of time, the court has to determine if the applicant has established sufficient cause or good cause as to why the sought application is to be granted. The affidavit in support of the application must disclose good cause or sufficient reasons for delay.

Going through the affidavit submitted by the applicant nothing was deposed to justify the reason for the delay. Rather, the applicants have only demonstrated as to why they want to file an application for orders of certiorari, mandamus and prohibition and not why they should be extended the time as prayed in their chamber summons.

Further to that, even the issue of illegality which was elaborated in their submission does not feature in their affidavit. The position of the law is clear that the submission is not an evidence and new issues cannot be raised in submission. As in the case of **Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006 (CAT-unreported), it was held that;

"Submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."

Guided by the cited authority the issue of illegality which was raised in their submission is hereby disregarded by the court as the new fact raise in the submission of the applicant and not pleaded in their chamber summons and the affidavit.

A handwritten signature in blue ink, appearing to read 'A. A. M. J.', is written over a horizontal line.

Before I pen down, I have also considered that, the applicants have failed to account for their delay to justify to this court to extend them time to file for their application. The reasons to account for each day of delay was well stated in the case of **Bruno Wenceslaus Nyalifa v. Permanent Secretary Ministry of Home Affairs & Another** [2018] TLR (CAT) 58 that;

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

The applicant's counsel on his written submission and the facts deposed in the affidavit in support of the application stressed much on issues which were not related to present application. Therefore, there was no reason offered to warrant this court grant the extension of time.

For the foregone reasons, I am inclined to agree with the respondents that, the applicants have failed to show sufficient cause for the delay to warrant this Court grant the application. Consequently, the application is hereby dismissed with costs.

It is so ordered.

DATED at **ARUSHA** this 7th day of October, 2022.



G. N. Barth

G. N. BARTHY

JUDGE

07/10/2022