

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 95 OF 2022

**(Originating from Probate and Administration Appeal No. 2 of 2018,
Morogoro District Court).**

NASSORO HALFAN MAKUMVIAPPLICANT

VERSUS

ABDULKARIM SAID ATIFRESPONDENT

RULING

MRUMA,J.

This is an application for enlargement of time within which the Applicant can file a review of the Judgment and degree of this court (Rwizile ,J) in Pc. Civil Appeal No. 18 of 2019 delivered on 15th July 2020. The purpose of the intended review is said to be able to enable the court to Correct or make proper interpretation of the said judgment in relation to the decree issued therein. The reasons for delay given by the Applicant is that after the judgment of the High Court the Applicant was prosecuting Probate Cause No.8 of 2020 with due diligence and issue of time limitation

towards the said probate cause was not raised until when it was discovered that the judgment of the High Court which directed family members to appoint another administrator differs with decree arising there from.

Another ground upon which the application is based said to be illegality noted in the judgment and the decree in Pc. Civil Appeal No. 18 of 2019 which is said to have been realized during the hearing of Probate and Administration Cause No. 8 of 2020 as a result of which the procedure in that matter had to be stayed on 22.2.2022 and the Applicant be granted two weeks' time to file a review in the High Court.

Responding to the Applicant's submissions, Counsel for the Respondent has contended that the Applicant has not bothered to account for every day of delay as required pursuant to the decision of the Court of Appeal in the case of **LYAMUYA CONSTRUCTION CO LTD Vs BOARD OF TRUSTEES OF REGISTERED TRUSTEES OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA Civil Application No.2 of 2010**. The learned counsel submitted that the Applicant's contention that he failed to notice the alleged mismatch between the judgment and decree is an afterthought because he was duly represented in PC. Civil Appeal No. 18 of 2019. The learned Counsel referred this court to the decision of the Court of Appeal in the case of

LOSWAKI VILLAGE COUNCIL & ANOTHER Vs SHIBESHI ABEBE

(2000) TLR 204 where it was held inter alia that; those who seek the aid of the law by instituting proceedings in a court of justice must file such proceedings within the period prescribed by law and that those who seek the protection of the law in a Court of justice must demonstrate diligence.

On the alleged illegality, counsel for the Respondent contended that in law where illegality is raised as a ground for extension, the alleged illegality must be demonstrated. The counsel said that there is no illegality in the judgment and decree of this Court in Pc. Civil Appeal No. 18 of 2019. The learned counsel referred this court to the decision of the Court of Appeal in the case of Tanzania Harbours Authority Vs Mohamed R. Mohamed (2003) TLR 76 where it was held that;

"This Court has said in a number of decisions that time would be extended if there is an illegality to be rectified; however this Court has not said that time must be extended in every situation."

Being an equitable relief, extension of time is underpinned on well settled principles which guide court to decline or grant the applications. In the case of **Samson Kishosha Gaba Vs Charles Kingongo Gaba (1990) TLR 133** the Court of the Appeal held that in determining

whether to allow an application for extension of time court has to consider reasons for the delay as well as likelihood of success of the intended appeal, in our case the intended review. In **Felix Tumbo Kisima Vs Tanzania Tele Communication Co Ltd and another (1997) TLR 57** where advocate for the Applicant was found guilty of mixing politics and legal profession as a result of which, though instructed and lodged a notice of appeal in time but failed to pursue it, the Court of Appeal held that the Applicant had sufficient reasons for delay in lodging the appeal. In the case **of Michael Lessan Kweka Vs John Eliafye [1997] 152** the Court of Appeal stated that;

"That court had the power to grant an extension of time if sufficient cause had been shown for doing so."

In that case the Applicant has shown reasonable diligence in correcting the error immediately upon discovery and that conduct warranted for enlargement of time in his favour. The question for determination in the present case is whether the Applicant has been able to demonstrate or show sufficient reasons for the delay.

As stated at the outset of this application, it is based on the grounds on the face of the chamber summons and the supporting affidavit. The main reason for the delay is said to be that the Applicant was diligently

prosecuting. Probate Cause No. 8 of 2020. With due respect to the learned counsel for the Applicant I am unable to comprehend how the prosecution of Probate No. 8 of 2020 could lead to the delay in discovering the alleged error in the Judgment of the High Court in Pc. Civil Appeal No. 18 of 2019. Judgment in Pc. Civil Appeal No. 18 of 2019 was handed down on 15th July 2020, and this application was presented for filing on 9th March 2022 which is a period of 602 days. In terms of item 3 of the Law of Limitation Act [cap 89 RE 2019] an application for review ought to have been filed within thirty (30) days from the date of the impugned decision. The Applicant did not account for those 602 days and as I have just explained there is no close connection between prosecuting Probate No.8 of 2020 in the District Court and discovering and rectifying the error in the judgment of the High Court in Pc Civil Appeal No. 18 of 2019. For the Applicant to successfully rely on the ground of "***diligently prosecuting another matter***" for any delay in taking an action within the prescribed time, he must satisfy the court that he was honestly expecting to get the reliefs he is seeking in the intended review in that case which he was prosecuting. In the case at hand the Applicant has not explained any nexus in terms of the reliefs sought in Probate No. 8 of 2020 and the reliefs in the intended review.

On the illegality of the Judgment and decree passed by this court, as it was held by the Court of Appeal in the case of **Tanzania Harbours Authority Vs Mohamed R. Mohamed (supra)**, it is not every illegality that would oblige courts to grant extension. It is only those illegality which may cause injustice if it is not dealt with. In the present matter despite the fact that the alleged illegality had not been substantiated and even if it had been established, correction of an error on the face of the record does not necessarily hold a cumbersome procedure by way of review in terms of section 96 of the Civil Procedure Code [cap 33 RE 2019]. In terms of that law correction of an error in the judgment or decree of the court can be done either by the court on its own motion or upon application by either party. From the wording of section 96 of the Civil Procedure Code and the practice of this court such application can be through formal application and or administrative letter alerting the court of errors in the face of its judgment.

In the light of what has been discussed above, the application for enlargement of time to file a review of the Judgment and decree in Pc. Civil Appeal No. 18 of 2019 is dismissed with costs to the Respondent.

Order accordingly.



A handwritten signature in blue ink, appearing to read "A. R. Mruma".

A. R. Mruma

Judge

On the illegality of the Judgment and decree passed by this court, as it was held by the Court of Appeal in the case of **Tanzania Harbours Authority Vs Mohamed R. Mohamed (supra)**, it is not every illegality that would oblige courts to grant extension. It is only those illegality which may cause injustice if it is not dealt with. In the present matter despite the fact that the alleged illegality had not been substantiated and even if it had been established, correction of an error on the face of the record does not necessarily hold a cumbersome procedure by way of review in terms of section 96 of the Civil Procedure Code [cap 33 RE 2019]. In terms of that law correction of an error in the judgment or decree of the court can be done either by the court on its own motion or upon application by either party. From the wording of section 96 of the Civil Procedure Code and the practice of this court such application can be through formal application and or administrative letter alerting the court of errors in the face of its judgment.

In the light of what has been discussed above, the application for enlargement of time to file a review of the Judgment and decree in Pc. Civil Appeal No. 18 of 2019 is dismissed with costs to the Respondent.

Order accordingly.



A. R. Mruma

Judge

3/10/2022.

3/10/2022

Coram: Hon. A.R.Mruma,J

For the Applicant: Absent

For the Respondent: Mr. Ignas Punge for

Cc: Delphina

Court:

Ruling delivered this 3rd day of October 2022 in presence of Mr. Ignace Punge, advocatge for the Respondent but in absence of the Applicant.

R.A. Explained.



A handwritten signature in blue ink, appearing to read "A.R. Mruma", is written over the printed name.

A.R.Mruma

Judge

3/10/2022