

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS LAND APPLICATION NO. 37 OF 2019**

**BIN KULEB TRANSPORT COMPANY LIMITED ..... APPELLANT**

**VERSUS**

**REGISTRAR OF TITLES ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER FOR LANDS ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**CARGO STARS LIMITED ..... 4<sup>TH</sup> RESPONDENT**

*(Arising from the order and act of the Registrar of Titles dated 31<sup>st</sup> March 2016 under  
filed document number 177567)*

## **RULING**

Date: 10/10 & 10/11/2022

**NKWABI, J.:**

This is a ruling on an application for extension of time within which to file a notice of appeal against the order and act of the Registrar of Titles dated 31<sup>st</sup> March 2016. The applicant too would love to have his costs in prosecuting this application reimbursed by the respondents. The application was preferred under the provisions of section 14 (1) of the Law of Limitation Act, Cap 89 R.E. 2002 now Revised Edition 2019.

The facts leading to this application according to the affidavit supporting the chamber summons are that the applicant is a lawful owner of a landed property under title No. 47622 situated at Kurasini area within Dar-es-Salaam city since 1998. On 31<sup>st</sup> March 2016, the 1<sup>st</sup> respondent issued the applicant with a notice of intention to revoke the applicant's right of occupancy over the piece of land. The notice is dated 29<sup>th</sup> October, 2015.

It was on 8<sup>th</sup> July, 2016, the applicant was informed by her former advocate that her name was deleted from title No. 47622 as from 31<sup>st</sup> March 2016 in his view, purportedly in order to rectify an error in the land Register, without notice and when notice came up to him, the time to challenge the act of the 1<sup>st</sup> respondent had expired. She was, on 17<sup>th</sup> February, 2017, granted by this Court extension of time to appeal out of time in Misc. Land Application No. 86 of 2016. He lodged the appeal, however, it crumbled to the ground as no notice of intention to appeal was filed which was contrary to section 102 (1) (a) of the Land Registration Act, now Cap 334 R.E. 2019. The appeal was struck out.

The applicant believes that he has all times from he became aware of the impugned order or act of the 1<sup>st</sup> respondent been in Court attempting to pursue her rights of appeal.

The application is vigorously resisted by the respondents. The 4<sup>th</sup> respondent categorically stated that that property is her property. It was added for the 4<sup>th</sup> respondent that what the applicant is doing in this application is an abuse of Court process.

This application was heard by way of oral submissions. Mr. Killey Mwitasi, learned counsel appeared for the applicant. On the side of the respondents, Ms. Alice Mtulo, learned Senior State Attorney appeared for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The 4<sup>th</sup> respondent was represented by Mr. Sosthenes Ndebwela, learned counsel.

In support of this application, the argument of Mr. Mwitasi for the application for extension of time is that there is a serious illegality in the decision of the Registrar of Titles as indicated in paragraph 11 of affidavit in support of this application. He stated, there is a violation of the right to be heard while citing **Mufindi Paper Mills Ltd V. Ibatu Village Council and 3 others**, Civil Application No. 532/17/2017, CAT (unreported). He prayed for extension of

time to file notice of appeal out of time. He suggested 14 days extension of time would be sufficient for them.

Countering the argument, Ms. Mtulo asserted that the illegality stated is not apparent on the face of the record. It is not specific on the affidavit. For that position, she relied on **Omary Ally Nyamlega v. Mwanza Engineering work**, Civil Application No. 94/08/2017 CAT (unreported). On the claim of denial of right to be heard, she argued that even the errors were not pointed out specifically in the affidavit.

While making a rejoinder, Mr. Mwitasi contended that the submissions in reply are misplaced and out of record. He pointed out that they attached the grounds of appeal which show the grounds for the alleged illegalities. The sufficient cause is pointed out in the annexure.

He asserted, the Court of Appeal ruled that De – Mello, J wrongly dismissed the matter as such the Court Appeal of Tanzania returned this application to be determined on merit. He added that the applicant has not slept on her right as the applicant has been in Court. He noted that the whole counter affidavit has been answered by Court of Appeal Tanzania and the Court of Appeal decision answers also the grounds by De – Mello, J.

Lastly Mr. Mwitasi pointed out that, there was a mistake by the counsel for the applicant which could be seen in paragraph 6 -10 of the affidavit in the circumstances, he prayed the applicant be allowed to file the notice of intention to appeal.

I am quite persuaded by the 4<sup>th</sup> respondent's averment in her counter-affidavit that the applicant's application and particularly the ground for extension of time advanced by the applicant for the application which is the alleged illegality is an abuse of Court process and embarrasses the respondents. It is an abuse of court process because the order and act itself sought to be impugned in the intended appeal, has not been attached to this application (affidavit). That is contrary to what was ruling in **Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015** CAT (unreported) where it was stated:

*"Extension of time is a matter for discretion of the Court and that the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time."*

See also **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT).

While affidavit evidence is equated to oral testimony, government businesses are conducted through papers. It is trite law that contents of a document ought to be proved by the document itself, see **Ramji v. Shivji Jossa & Sons** [1965] E.A. 125. I would have expected the applicant to attach a copy of the order or act that deleted her name from the title deed or copy of the search report. Short of that I feel like I will be acting on mere speculation which might lead to ridicule of the Court ruling or orders. The applicant is partly to blame on the failure to attach the document as indicated above. One may see **Lim Han Yung v. Lucy Treases Kristensen**, Civil Appeal No. 219 of 2019 CAT, (unreported) where it was held:

*"... We think that a party to a case who engages the services of an advocate, has a duty to closely follow up the progress and status of his case. A party who dumps his case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and status of his case."*

See also **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 CAT (unreported).

In the premises, the alleged illegality is not apparent on the face of the record, leave alone if the same is of sufficient importance as stated 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."*

Thus, the claim that there is illegality in the order and act of the 1<sup>st</sup> respondent is found ungrounded and it is dismissed.

Another argument of Mr. Mwitasi that the delay is technical one as the application was struck out by this Court which gives right to file a fresh one,

while exemplifying **Vodacom Tanzania Limited v. Commissioner General T.R.A.**, Civil Application No. 465/20 of 2019 CAT (unreported) and **Pita Kempap limited v. Mohamed Abdulhussein**, Civil Application. No. 128/2004 CAT (unreported) met a fierce resistance.

Indeed, in reply submission, Ms. Alice argued against the raised issue of technical delay contending that the applicant was granted by the Court 28 days to file notice of appeal in the ruling by Kitusi, J., as he then was, in Misc. Land Application No. 86/2016. She further explained that the applicant instead filed a petition of appeal instead of notice of appeal. She added, she was given right to be heard but the applicant slept over her right. Ms. Alice insisted, the law of right does not help those who sleep over their rights. She backed her stance with **Barclays Bank Tanzania Limited V. Phylisiah Hussein Mcheni**, Civil Appeal No. 19/2016 CAT (unreported).

It was added for the respondents that the applicant failed to abide by the order of the Court. It was also explained that technical delay is distinguishable under the circumstances. So, the applicant has failed to advance sufficient cause for the delay, Ms. Alice prayed the application be



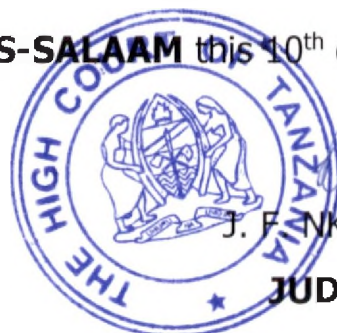
dismisses with costs. Mr. Ndebwela counsel for the 4<sup>th</sup> respondent concurred with the submissions of Ms. Alice.

In rejoinder, Mr. Mwitasi maintained that this is a technical delay after the decision of the Court of Appeal Tanzania in Civil Application No. 522/12 of 2020. He urged, the application is merited and prayed it be allowed so that the decision of the Registrar is brought before this Court to be challenged.

I have duly considered the submissions of both counsel. Since the basis of this application is missing as I have extensively discussed when I was discussing the alleged illegality as, the claim that the delay is technical one cannot be heard and entertained for the same reasons I have already stated. I need not add more.

In fine, I rule that this application is untenable and it is dismissed. Each party, however, has to bear their own costs. It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 10<sup>th</sup> day of November, 2022



J. F. NKWABI  
**JUDGE**