THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION NO. 1 OF 2019

(Arising from Land Case No. 81 of 2014 in the High Court of Tanzania at Dar es Salaam)

STANSLAUS PETER SHAYO ..... APPLICANT

VERSUS

DAVID GAMBA MACHUMU ..... 1ST RESPONDENT

SHABAN MCHUMILA..... 2ND RESPONDENT

MSAMA AUCTION MART LTD ..... 3RD RESPONDENT

THE COMMISSIONER MINISTRY FOR

LANDS, HOUSING AND HUMAN SETTLEMENT..... 4TH RESPONDENT

ATTORNEY GENERAL ..... 5TH RESPONDENT

RULING

28th September & 19th October, 2022

BWEGOGE, J.

The applicant herein above named, has lodged an application in this Court under S.14(1) of the Law of Limitation Act (Cap. 89 R.E. 2002) praying this court to grant an extension of time in which he may apply for proceedings, among others. The record of this Court entails the following background:

y back in 2014, the applicant instituted a land matter herein this Court praying for judgment and decree against the respondents herein on the following reliefs; -

(a) *Declaration that the Plaintiff is a legal owner of the suit land.*
(b) *Declaration that the survey plan No. 32823 didn't follow proper procedure; thus, null and void.*
(c) *TP No. 1/701/392 be honoured.*
(d) *Compensation to the tune of Tshs. 35,000,000/= for demolition caused.*
(e) *General damages as to be assessed by the Court.*
(f) *Any other reliefs as the Court may deem just to grant.*

When the matter was scheduled for hearing, the counsel for the 1st defendant, Mr. Brian Mambosho, had raised an objection that the matter was time barred as the cause of action arose beyond the prescribed period of 12 years, contrary to s.3 and 5 of the Law of Limitation Act and item 22 Part I of the schedule to the Act; hence, doomed to be dismissed with costs. The trial Court found that the pleadings depicted that the cause of action in the matter arose on 28/08/1998 and the suit was instituted 16 years later. Thus, the Court concluded that in terms of item 22 of Part I of the schedule to the Law of Limitation Act, the suit was time barred. The suit was dismissed with Costs. The ruling of the trial Court was made on

27th December, 2016. However, it was until 3rd August, 2017 that the applicant became aware of the existence of the ruling of the Court and dismissal order entered against his suit. Hence, the applicant lodged this application for grant of extension of time within which to apply for proceedings, for the purpose of preparing a record of appeal, among other applications.

The applicant was represented by Mr. Samwel Shedrack, learned advocate, whereas Ms. Comfort Opuku, Mr. Andrew Kanonyele and Mr. Rajabu Mlindoko, learned advocates, represented the 1st, 2nd and 3rd respondents respectively. The 4th, and 5th respondents absconded to appear in court; hence, the matter herein was heard without their presence.

The counsel for the applicant, in substantiating this application, had stated that the trial Court delivered its ruling on 27/12/2016 without the attendance of any party herein. That the trial judge having heard the preliminary objection had adjourned the suit repetitively and finally made an order that the ruling would be delivered on notice. The counsel and the applicant had kept following up on the case to be informed of the date of delivery of the ruling but they were persistently informed that they would be notified of the date when the ruling would be ready for delivery.

Further, the counsel submitted that it was until 03/08/2017 that they were informed the ruling was already delivered. Promptly, the counsel had applied for a copy of the ruling and drawn order. Upon receipt of the ruling and drawn order, the counsel noted that the ruling was delivered during the period of the High Court vacation, *i.e.,* on 27/12/2016. And, the Counsel promptly filed three applications in this Court namely; **one,** application for extension of time in which to file the notice to appeal out of time; **two**; application for extension of time to apply for proceedings out of time; **three**, application for extension of time to file leave out of time. The first application was granted on 29/08/2019. The 2nd application was struck out on technical ground, consequently, the application herein was filed. The 3rd application was taken by event following the amendment of the law which waived the requirement of leave. Thus, the application herein is the only matter pending in this Court.

In justifying the application herein, the counsel charged that the ruling was delivered without notice to the parties herein. Hence, they failed to lodge an application in time. The counsel alleged that the delivery of the ruling on 27/12/2016, during Court vacation, amounts to illegality. That the record on the ruling issued by the trial court entails that notice was issued to the parties but the parties had not appeared; hence, the ruling was

deemed to have been ready to the parties. This record, opined the counsel, contravenes Order XX, rule 1 of the Civil Procedure Code (Cap. 33 R.E. 2019) which instructs that judgment should be pronounced in Court on the date scheduled, of which due notice should be given to the parties to that effect. The counsel further opined that since the trial Court contravened this provision, then it amounted to illegality, which prompt this Court to grant the extension of time.

In tandem with the above, the counsel forcefully contended that they were never served with the notice from the trial Court informing them on the date scheduled for delivery of the ruling. Hence, the trial Court had cooked up the record to the effect that notice was duly given. That in search of truth, the counsel has gone through counter affidavits filed by the respondents herein but none states the fact that notice for appearance in court was received.

Apart from the above, the Counsel contended that the trial Court had dismissed the suit on the ground of time limitation whereas they had filed the suit within time. To him, likewise, the court decision amounted to illegality. The counsel contended that illegality is sufficient ground for an extension of time to be granted. The counsel referred the cases namely; **Stanslaus Peter Shayo vs David Gamba Machumu and 4 Others,**

Misc. Land Case Application No. 187 of 2017 HC (unreported) and **Grand Regency Hotel Ltd vs Pazi Ally and 5 Others**; Civil Application No. 100/01 of 2017 C.A. (unreported) to bring his point home. On the above premises, the counsel prayed the application herein to be granted in the interest of justice.

On the other hand, counsel for the 1st, 2nd and 3rd respondents vehemently contested this application. Ms. Comfort Opuku, Counsel for 1st respondent had countered that the applicant herein has failed to show sufficient cause to warrant the grant of extension of time. That there is no proof of follow-up for the date for delivery of the Court ruling. Likewise, there is no proof of diligent follow-up for the case documents requested.

Further, Mr. Kanonyele, Counsel for the 3rd respondent, countered that the counsel for the applicant has shown a great indication of negligence. That there is lacking diligence in following up on information in respect of the date scheduled for delivery of the ruling. Hence, there is no sufficient cause furnished for an inordinate delay to file the application herein. The counsel reminded this Court of the importance of litigation to come to an end taking into consideration the fact that the matter herein has been pending in court for nearly 10 years now and there is no chance of

intended appeal to succeed. On the above premises, the counsel prayed the application herein to be dismissed.

Mr. Mlindoko, the counsel for the 3rd respondent had responded to the submission made by the counsel for the applicant in that, the grant of extension of time, is within the discretion of the Court. However, he cautioned this court that discretion should be exercised judicially. That the mistake of the advocate has never been a good ground for grant of extension. That no proof has been brought to the attention of this court to substantiate the fact that the counsel had presented a request to be availed with notice of the date of delivery of the ruling or proof of the fact that the counsel had promptly requested the case documents. And in absence of the disclosure that the counsel for the applicant perused the relevant case file, then the trial court record to the effect that notice was issued to the parties herein, cannot be impeached. Hence, the counsel for the 3rd respondent concluded that it is obvious the counsel for the applicant has failed to account for the delay.

In respect of the alleged illegality, the counsel for the 3rd respondent opined that there is no illegality whatsoever to be relied upon as the ground for grant of extension, be it on the remarks made by the trial judge or the dismissal of the main suit. The counsel concluded that the purported

failure by the trial court to serve notice to the parties to appear in court for delivery of the ruling doesn't amount to illegality. The counsel concluded that the missing fact pertaining to the actual time the copy of the ruling was supplied, likewise, leaves so much to be desired. The counsel prayed for the dismissal of this application.

In rejoinder, the counsel for the applicant had reiterated his previous stance that the alleged illegality is premised upon the failure of the trial Court to deliver the ruling to the parties, as none of the parties herein received notice from the trial court. That ruling cannot be deemed to have been read to the parties without notice to that effect. The counsel expounded that the notification and presence of parties in court on the date of judgment intends to provide room for the parties to take legal action. Otherwise, the counsel contended that he cannot be blamed for negligence in following up on the case as there is no such procedure to push the judge to issue notice for delivery of the decision whereas the trial judge had previously made an order that the decision would be delivered on notice. The counsel had concluded by submitting that his appeal has a chance of success on the ground that the trial judge erred in deciding that the suit was time barred. That is all about the professional mettle martialed by counsel for both parties hereto.

In determining the merit or otherwise of this application, this court is obliged to resolve the issue on whether the applicant has furnished sufficient cause for delay to be granted the extension of time sought. The provisions of S.14(1) of the Law of Limitation Act enjoins this court with power to extend the period of limitation for institution of an appeal or an application, for any reasonable or sufficient cause. And the term "sufficient cause" is assigned meaning in the case of **Tanga Cement Company Ltd vs Jumanne D. Masangwa and Amos A. Mwaluenda** – Civil Application No. 06 of 2001 (Unreported) whereas it was stated:

> *"What amount to sufficient cause has not been defined from decided cases, a number of factors has to be taken into account, including whether or not the application has been brought promptly. The absence of any valid explanation for delay, lack of diligence on part of the applicant."*

The applicant is obliged in law to show in his affidavit, or oral submission the particulars constituting sufficient cause for extending the time after an inordinate delay to take appropriate legal action. In the Privy Council case of **Ratnam vs. Cumarasamy** (1965)1WLR 8 cited in **Kalunga & Company Advocates vs. National Bank of Commerce Ltd,** Civil Application No. 124 of 2005, [2006] TZCA 55, it was aptly held:

> *"The rules of court must, prima facie, be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken, must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation."*

Thus, sufficient cause encompasses all the circumstances of each case. There must be material placed before the trial court which will enable it to exercise its judicial discretion in order to extend the time limited by the law [**Regional Manager, Tan Roads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007 (unreported).

I am on all fours with the counsel for the applicant in that when the point at issue is one alleging illegality of a decision being challenged, the Court has a duty, even if it means extending time for the purpose, to ascertain the point. And, if the alleged illegality is established, to take appropriate measure to put the matter and record straight [**Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** (1992) TLR 182].

Now, at this juncture, I proceed to test the applicant's case to assess whether it passes the scales of justice above mentioned. From the outset, I wish to subscribe to the fact that, as submitted by the counsel for the applicant, the ruling was delivered during the High Court vacation period. Likewise, it is a fact that the ruling was delivered in absence of the parties herein. And, based on the record made by the trial judge after the delivery of the impugned ruling and pleadings filed by parties herein, there is the likelihood that the notice to the parties given by the trial Court for an appearance on the date of delivery of ruling, didn't reach the same.

However, I refuse to purchase the argument made by the Counsel for the applicant in that delivery of the ruling in absence of the parties to the case amounts to illegality. As well submitted by Mr. Mlindoko, Counsel for the 3rd respondent, the applicant's counsel has not informed this Court whether he perused the relevant case file to find out what had transpired in the proceedings which prompted the trial judge to enter the impugned record. Therefore, this Court is inclined to believe the trial judge's record in that the notice was duly served to the parties who failed to appear. Be that as it may, there is nothing to impute the court record to illegality. I subscribe to the submission of the counsel for the 3rd respondent in that the absence of

parties on the date scheduled for delivery of the decision cannot amount to illegality.

Likewise, the finding of the trial Court that the suit was time barred doesn't amount to illegality. The impugned finding of the trial Court was based on the fact that the cause of action arose on 28/08/1998 whereas the suit was brought 16 years later; hence, time barred. Any misapprehension of fact arising thereto, with due respect, doesn't amount to illegality.

The plea of illegality having collapsed, I proceed to find out whether the applicant had furnished sufficient cause for the delay to justify the grant of time enlargement. In this respect, I have the following observations: **One**, it is uncontroverted fact that the ruling was delivered on 27/12/2016. And it is a common ground, as conceded by the counsel for the applicant, that it was until 03rd August, 2017, about eight (8) months later, that he was notified that the ruling had been delivered in their absence. There is no fact or particulars stating the means upon which the notice was communicated to the applicant and his Counsel to that effect. **Two**, the counsel for the applicant has not enlightened this Court when exactly the trial judge made an order that the ruling would be delivered on notice. In the same vein, there is no record in pleadings filed by the counsel for the applicant to enable this Court to find out when exactly the applicant and

his counsel herein were notified that the ruling had been pronounced in their absence. **Three,** there is no proof or assertion made by counsel for the applicant that he had attempted to remind the deputy registrar of the High Court to be informed of the date of delivery of the respective ruling. The counsel has justified his inaction by stating that there is no procedure to demand the trial judge to schedule the case for delivery of the decision. As I aforementioned, the counsel could at least register his concern to the deputy registrar. **Four,** there are no particulars as to when exactly the 1st application was instituted in Court and when exactly it was struck out on technical ground, to gauge the promptness of the counsel herein in taking action having been availed a copy of the ruling sometime in 2017.

Taking into consideration the fact that the ruling was delivered on 27/12/2016, and the applicant and his counsel became aware of the delivery of the respective ruling on 03/08/2017, I am on all fours within counsel for respondents herein in that the applicant and his counsel didn't diligently follow up their case. The inaction over a period of eight (8) months is not compatible with diligence on part of the applicant and his counsel.

Based on the above, I am of the considered opinion that the counsel for the applicant has failed to show cause, or account for the delay in filing the

application herein. It suffices to point out that there is no sufficient cause shown sufficing to move this Court to enlarge the time in which the applicant may apply for proceedings for the purposes of preparing the record of appeal.

The counsel for the applicant had forcefully submitted that he has a chance to succeed in the appeal. This Court has a different opinion. Be that as it may, the applicant was legally obliged to show good cause / sufficient cause first to cross the hurdle of the time of limitation. In this respect I am constrained to purchase a leaf in the olden decision of the defunct Court of Appeal of East Africa in **Parry vs Carson** (1963) EA 546 whereas it was held:

> *"....though* ***the intended appeal may well have merits, that was of little reference if the applicant could not show good cause or sufficient cause for delay.....*** *Rules of limitation are ordained for a purpose. It doesn't seem just that an applicant who has no valid excuse for failure to utilize the prescribed time, but tardiness, negligence or ineptitude of counsel, should be extended extra time merely out of sympathy for his cause". (Emphasis mine).*

And in **Allison Xerox Sila vs Tanzania Harbours Authority**, Civil Reference No. 14 of 1998 C.A. (Unreported) the Court said.

> *"..... where extension of time is sought, consequent to a delay, the cardinal question is whether sufficient reason is shown for delay. Other considerations such as* ***the merits of the intended appeals, would come in after the applicant has satisfied the Court that the delay was for sufficient cause****." (Emphasis mine).*

Having so said, this Court finds that the application herein is devoid of merit. The applicant has failed to furnish sufficient reasons for delay to be granted extension of time. The application herein is hereby dismissed. Based on the circumstances of this case, each party shall bear his costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 19th of October, 2022.

O. F. BWEGOGE

JUDGE

The judgment has been delivered this 19th October, 2022 in the presence of the applicant and Ms. Comfort Opuku, Counsel for the 1st respondent.

Right of appeal explained.

O. F. BWEGOGE

JUDGE