

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 647 OF 2021

(C/O Civil Appeal No. 50 of 2019 of the High Court, originating from Civil Case No. 56 of 2017 of District Court of Temeke)

KOUSHAN DERAKSHANI HAMEDANI APPLICANT

VERSUS

NASSORO SALUMU 1st RESPONDENT

MUHIDINI MIRAMBO 2nd RESPONDENT

ASHA MUHAMEDI 3rd RESPONDENT

MTUPENI ALLY 4th RESPONDENT

AHA SALUMU 5th RESPONDENT

MATHIAS MGIMBA 6th RESPONDENT

MARIAM BUSHIRI 7th RESPONDENT

QHANIM KHALFANI 8th RESPONDENT

MWARIZIKI SOPHIANI 9th RESPONDENT

WATENDE MSHANA 10th RESPONDENT

ABEDI IDDI 11th RESPONDENT

JUMA CHAUREMBO 12th RESPONDENT

ZAINA MUSSA 13th RESPONDENT

DOLPHINA MROPE 14th RESPONDENT

KHARADI ALLY 15th RESPONDENT

HASSANI ISSA 16th RESPONDENT

ZAINABU MUHOMBO 17th RESPONDENT

IDDI SHOMARI 18th RESPONDENT

SAIDI M. KIDULA 19th RESPONDENT

ALLY HASSAN ALLY 20th RESPONDENT

KEJELI SAIDI 21st RESPONDENT

RULING

Date: 01 & 05/12/2022

NKWABI, J.:

Under the provisions of section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019, the applicant is seeking for extension of time within which to file notice of appeal against the judgment and decree of this Court (Masabo, J.) dated 15th December, 2020. The applicant too is asking this Court to extend time to file an application for leave to appeal to the Court of Appeal over the judgment of this Court in Civil Appeal No. 50 of 2019 dated 15th December, 2020. In addition, the applicant is praying for costs of the application and any other relief(s) this Court shall deem fit to grant.

The application was argued by way of written submissions. Submissions were filed. To support the application, Mr. Ndanu Emmanuel Stephen, learned counsel drew and filed the written submission in chief. For the respondent, Mr. Joseph Y. Mbonela, learned Advocate, drew and filed the written submission, though without having filed counter-affidavit relying on **Harith Rashd Shomvi v. Aziza Juma Zomboko**, Civil Application No. 496/01 of 2020 CAT (unreported) that the respondent could resisted the application on point(s) of law.

The counsel for the respondent has advanced several reasons to justify the sought extensions of time. The 1st one (based on paragraph 4 of the affidavit) is that the judgment was delivered in the absence of the applicant when the judgment had been adjourned on several occasions, without notification to the counsel for the applicant. However, the counsel for the applicant did not attach any proof to his allegations. Proof that was needed is the proceedings of this Court. The copy of the judgment indicate that the last adjournment (order) was on 12th October, 2020 and judgment was delivered on 15th December 2020 well within the prescribed time within which to deliver the judgment. I accord adverse inference for the counsel's failure to attach the proceedings. As to the delay to be supplied of copies, there is no any affidavit duly sworn by the Deputy Registrar to the effect that indeed there was delay in supply. I say so because, he could have been replied to and supplied but hidden the fact. He is alleging regular follow-ups without any proof or the affidavit of the Deputy Registrar of the High Court. The need for proof has been clearly enunciated by the Court of Appeal in its very recent decision in **Jacqueline Ntuyabaliwe Mengi & 2 Others v. Abdiel Reginald Mengi & 5 Others**, Civil Application No. 332/01 of 2021, (unreported) where the Court stated:

"We note that paragraphs 8 and 14 of the 1st applicant's affidavit and paragraph 10 and 11 of Kahenadguza's affidavit contain hearsay not supported by evidence. For instance, in paragraphs 14 and 11 of the respective deponents affidavits they have averred an information obtained from the DR Fovo regarding how best they could deal with the so-called defective decree while the said DR has not sworn any affidavit to that effect." [Emphasis mine].

The applicant's counsel, is secondly, claiming that at the material time, the applicant was suffering from ailments (ill health) stating that the applicant was in extreme bad health. The applicant has failed to prove that at all that time, he was admitted in hospital. My understanding of the medical chits he attached to the affidavit, he was getting treatment and then going home. The applicant has not told this Court that he was unable to communicate with his lawyer for all the period of more than one year due to illness.

The third justification advanced by the counsel for the appellant for this Court to grant the discretionary remedy of extension of time, is that there are

illegalities in the judgment of this Court. The, alleged illegalities are as follows:

- i. Whether the High Court Judge was correct to set aside the Judgment and Decree of the District Court of Temeke in Civil Case No. 56 of 2017 on the ground that defamatory letter was improperly admitted.
- ii. Whether it was correct for the High Court Judge to hold that the Notice to Produce was supposed to be served to the third party and not the maker of the said document contrary to the provision related to notice to produce under the evidence Act.
- iii. Whether her Ladyship was correct to deliver the Judgment in absence of the Applicant.

The counsel for the respondent merely claimed that the alleged illegalities were not explained. In my view, I think that the position has already been established by the Court of Appeal of Tanzania on how the alleged illegality may be ground for extension of time. That was in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where it was ruled that:

"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in VALAMBHIA'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 point of law must be that 'of sufficient importance' and, I would add that it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process."

See also **Omary Ally Nyamalege (As the Administrator of the estate of the late Seleman Ally Nyamalege) & 2 Others v. Mwanza Engineering Works**, Civil Application NO. 94/08 of 2017 (CAT) (unreported).


In the present application, the applicant has failed to meet the requirements as indicated above. The alleged illegalities are neither apparent on the face of the record nor that they can be discovered without a long-drawn argument

or process, leave alone the truth that the alleged points are of no sufficient importance.

That said, I find that the applicant has failed to demonstrate sufficient cause for extension of time. He has failed to account for each day of the delay. He has also failed to demonstrated any illegality in the judgment and decree of this Court which is apparent on the face of the record and as I have indicated above. I dismiss the application with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 5th day of December, 2022.



J. F. NKWABI
JUDGE