

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 559 OF 2021

EMILINE MANASE MOLLEL APPLICANT

VERSUS

DOROTHEA AMBROSE LUSOZI RESPONDENT

RULING

4th, & 30th March, 2022

ISMAIL, J.

The instant application intends to trigger the Court's discretion to grant an extension of time. The extension will inject a lifeline in the applicant's intention to challenge the decision of the District Court of Kinondoni in Civil Appeal No. 117 of 2020. The decision in that matter went against the applicant. The applicant is not certain, however, on what she intends to pursue, between appeal and revisional proceedings.

The application is supported by an affidavit sworn by John Carol Chogoro, learned counsel representing the applicant. The main contention is that the decision sought to be challenged was tainted with an illegality that

allegedly arose when the District Court raised the question of admissibility of the evidence, and made a finding without calling upon the parties to address the court on that point. The argument is that the parties were not accorded the right to be heard.

The respondent is opposed to the application. Through a counter-affidavit, sworn in reply to the application, the allegation that the question of admissibility of evidence was raised *suo motu* in the course of the appeal proceedings or at all, has been denied.

Disposal of the application was done by way of written submissions, filed by the parties, consistent with the schedule drawn by the Court.

In his submission, Mr. John Chogoro, learned counsel for the applicant argued that the decision sought to be impugned by the applicant is tainted with illegalities. The alleged illegalities reside in the court's decision to abandon issues raised by the parties, dwelling instead, on the issues raised by the court *suo motu* and without inviting the parties to address the court on them. Citing the decision in ***Murtaza Mohamed Raza Virani v. Mehboob Hassanali Versi***, CAT-Civil Application No. 164 of 2014 (unreported), Mr. Chogoro argued that the legal position, as it currently obtains, is that, where illegality is raised as a ground, the same serves as a

reason sufficient enough to grant an extension of time. He implored the Court to grant the application.

For his part, the respondent was of the firm view that the decision sought to be impugned was perfectly in order, and that it did not emanate from issues which were raised *suo motu*. With respect to the application, the respondent is of the contention that the same was filed three months after the decision she intends to challenge, and no reason has been adduced as to why the applicant was in dilatoriness.

The respondent argued that extension of time is granted upon adducing sufficient reasons, in the mould underscored in ***Mbogo v. Shah*** [1968] EA 93; ***Tanzania Revenue Authority v. Tango Transport Co. Ltd & Tango Transport Ltd v. Tanzania Revenue Authority***, CAT-Consolidated Civil Application No. 4 of 2009 (unreported). It was the respondent's argument that, in this case, the applicant has not accounted for everyday of delay between 31st August, 2021, the date on which the decision was delivered, and the date of filing the instant application. He argued that this requirement is consistent with the holding in ***John Dongo & Others v. Lepasi Mbokoso***, CAT-Civil Application No. 41/1 of 2018 (unreported).

The respondent was convinced that the application was a manifestation of lapses, inaction or negligence on the part of the applicant. He took the view that this application is lacking in merit and urged the Court to dismiss it.

The question for settlement by the Court is whether the application has met the threshold for granting an extension of time.

As unanimously submitted by counsel for the parties, extension of time is granted upon presentation of a credible case that may convince the Court to exercise its discretion and grant the application. This position has been stated in numerous court decisions some of which have been cited by the parties. In ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported), the Court of Appeal of Tanzania came up with key conditions that govern the grant of extension of time. These include the following: accounting for the period of delay; that the delay should not be excessive or disproportionately large. The applicant should also demonstrate diligence and; where illegality is alleged then such illegality should be of sufficient importance.

In the instant matter, the reason for the applicant's quest for extension of time is illegality, allegedly arising from the court's decision to raise news

issues and determine them without affording the parties an opportunity to be heard on the new issues.

While plausibility of the applicant's contention is a subject for determination on appeal, the Court's pre-occupation, at this stage, is to establish if the alleged indulgence constitutes an illegality and, if so, whether the alleged illegality is in the mould that can trigger the Court's discretion. The latter proposition takes into account that not every illegality can constitute the basis for extension of time. This is the view taken by the Court of Appeal in many of its decisions. In ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA*** (supra), the Court guided as follows:

*"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 that 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 point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one that***

would be discovered by a long drawn argument or process. "[Emphasis added]

See also: ***The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia*** [1992] TLR 185.

As intimated earlier on, what is alleged to be an illegality is determination of the matter without according the parties the right to be heard. If the applicant's version is anything to go by (and this is not in the Court's remit to decide at this point), such indulgence constitutes a serious infraction, not only of the principles of natural justice, but also of the basic constitutional rights guaranteed under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 (as amended). In my considered view, this is a point of law of sufficient importance and it is apparent on the face of record. It qualifies as one of the instances in respect of which extension of time may be granted. It will not be an act of aiding a man to drive from his own wrong, if the prayer in the instant application is acceded to (See: ***KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another*** (1972) E.A. 503.

In sum, I grant the application and order that the applicant should institute the appeal proceedings within fourteen (14) days from the date hereof. Costs to be in the cause.

It is so ordered.

DATED at **MWANZA** this 30th day of March, 2022.




M.K. ISMAIL
JUDGE