

**IN THE HIGH COURT OF TANZANIA**  
**(MAIN REGISTRY)**  
**DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO.22 OF 2021**

**KASSIMU MKUMBARU LIKWEIYE AND 30 OTHERS...APPLICANTS**

**VERSUS**

**DAR ES SALAAM SMALL INDUSTRIES  
COOPERATIVE SOCIETY LTD (DASICO).....1<sup>ST</sup> RESPONDENT  
MINISTER FOR AGRICULTURE.....2<sup>ND</sup> RESPONDENT  
THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT  
THE SOLICITOR GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

**14 & 28 Feb 2022**

**MGETTA, J:**

Through a legal service of Mr. Amos Sura, the learned advocate, thirty one (31) applicants brought an application by way of chamber summons made under **section 14 (1) of the Law of limitation Act, Cap 89** seeking for extension of time within which to file an application for leave to apply for Judicial Review against a decision made on 31/01/2014 by 2<sup>nd</sup> respondent namely the Minister for Agriculture. The application is supported by an affidavit affirmed by Kassimu Mkumbaru Likweiye, the 1<sup>st</sup> applicant on behalf of eighteen (18) others (though not put clearly who are they, out of 31 applicants).

The total 31 applicants include namely Kassimu Mkumbaru Likweiya, Omary Gari, Mussa Mfaume Chaungu, Athuman Said Kingwande, Ramadhan Abdallah Mchume, Abdallah Bakari Kiumulio, Shaban Abdallah Kilwanda, Mohamed Shaban Kumbota, Jafali Abdallah Nassoro, Hemed Said Mchenga, Said Salum Mchume, Seleman Said Ibrahim, Adamu Omar Masela, Thabit Nassoro Mtange, Said Abdallah Mtonele, Haji Masoud Mchela, Salehe Yusuf Salehe, Omar Said Mpwato, Mahamoud Mohamedi Mbwana, Juma Ramadhani Msongoro, Hamis Seif Mpate, Sefu Salum Mkate, Sefu Ally Mchambwa, Said Yusuf Mkumbalu, Omari Shabani Mkamate, Omari Hamis Katundu, Said Abdallah Nonga, Rashid Salum Nonga, Yusuf Mussa Miduma, Mohamed Said Limau and Omari Said kumbota.

When the application was called on for hearing, Mr. Sura appeared for the applicants; while, the 1<sup>st</sup> respondent namely Dar Es Salaam Small Industries Cooperative Society Limited (DASICO) enjoyed a legal service of Ms Margareth Ngasani, the learned advocate; and, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents namely the Minister for Agriculture, the attorney General and the Solicitor General respectively, were represented by Mr. Charles Mtae, the learned State Attorney.

Mr. Sura adopted the affidavit of the 1<sup>st</sup> applicant as part of his submission in support of the application. His submission is built on the ground that the applicants want to impugn the said Minister's decision because at the time the decision was made they were not granted right to be heard as enshrined under **Article 13 (6)(a) of the Constitution of the United Republic of Tanzania** as amended. To substantiate his submission, he referred this court to the case of **Shanti Versus Hindocha and Others [1973]**<sup>1</sup> EA 207 where it was inter alia held that an extension of time may be granted even where the record has been lodged out of time. As to why they were late to come in court to apply for leave, Mr. Sura said that they were looking for an advocate; and, also during his submission he raised a ground of illegality of the Minister's decision, they were not heard were not given a copy of the decision. He cited the case of **Principal Secretary, Ministry of Defence and National Service Versus Devram Valambhia [1992]** TLR 185, which is about the illegality of the records as a ground for extension of time. He also cited the case of **Kalunga and Company, Advocates Versus National Bank of Commerce Limited [2006]** TLR 235.

From the outset in response to the above submission, Mis. Margareth pointed out that Mr. Sura has submitted contrary to what is stated in the affidavit affirmed by the 1<sup>st</sup> applicant. That there was no evidence to prove that the applicants have exhausted all local remedies available as the impugned decision has not been submitted to the court. To that effect, denial of right to be heard to the applicants has not been proved. Furthermore, she submitted that the applicants have failed to explain the reason of delay to file the application. That the delay is inordinate and is associated with negligence of the applicants. She prayed this application to be dismissed.

Mr. Mtae strongly resisted the application. He submitted that the applicants have not shown sufficient reasons to warrant the grant of extension of time. That the powers to grant this application or not, is the discretion of the court, but which has to be exercised judiciously. The applicants have delayed for more than seven years since 2014. That the application has not met the criteria for grant of extension of time enumerated in the case of **Lyamuya Construction Co. Ltd Versus Board of Registered Trustees of Young Women's Christian Association of Tanzania**; Civil Application No. 2 of 2010 (CA) (Arusha)

(unreported) at page 6. He also averred that the affidavit is not properly before this court as the 18 applicants are unknown out of the present 31 applicants and has not shown that they consented the 1<sup>st</sup> applicant to depose to the affidavit. He substantiated his argument by referring to the case of **Judicate Rumishael Shoo & 64 Others Versus The Guardian Limited**; Civil Application No. 43 of 2016 (CA) (Dar es Salaam) (unreported) at page 10 where the Court of Appeal of Tanzania had a view that in order to know who would bear consequence in case the application is not successful, for example payment of costs and in order to assist the court to know who are moving the court, it is significant that all applicants must be known by names.

In connection to the foregoing, by looking at the application, the number of the applicants are mentioned to be 31, but the 1<sup>st</sup> applicant at paragraph 1 of his affidavit states that he is "*authorized to take oath in this affidavit on behalf of the remaining 18 Applicants*". That fact is confusing. I find the affidavit lacking and therefore useless.

As rightly submitted by Mr. Mtae, it is a trite law that to grant or refuse extension of time is entirely on the discretion of a court, and that extension of time may only be granted where it has been sufficiently

established that the delays was with the sufficient/good cause as provided for under **section 14 (1) of the Law of Limitation Act, Cap 89**, that they cited in the chamber summons.

As stated elsewhere herein, in the instant application the advanced reason for the delay was the failure of the 2<sup>nd</sup> respondent to timely grant the applicants certified copy of the impugned decision made on 31/01/2014, which is more than seven years ago. I asked myself: is that reason amounts to sufficient or good cause? The law does not define what amounts to good cause. In the case of **Regional Manager, Tanroad Kagera Versus Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2007 (CA) (unreported), it was held and I quote that:

*"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determinedly reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."*

Looking at the matter at hand, I can say that the applicants have not advanced good cause for the delay of seven years counting from

31/01/2014, the date of the impugned decision to 27/12/2021 the date when this application was filed. Furthermore, the applicants have not placed before this court material evidence which could persuade this court to exercise its discretionary power to grant the extension of time sought. That is to say seven years (7) and above delay has not been accounted for by the applicants.

In the case of **Lyamuya Case** (supra) at page 6, the Court of Appeal outlined the following principles and I quote that:

*"as a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according private opinion or arbitrarily"*

The Court proceeded that the following guidelines may be formulated:

- a) The applicant must account for all the period of delay*
- b) The delay should not be inordinate*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take..."*

Spinning on the views of the above holding and referring to the reasons advanced by the applicants' advocate, that is waiting to be given a copy of the impugned decision in order to apply for prerogative orders and taking into consideration the fact that the applicants have not evidenced their due diligence in acquiring the said copy by indicating days they spent in making follow up of the said copy or by any written communication between them and the Minister requesting for such copy of the impugned decision to the date of filling this application, all that indicate that the applicants and/or their advocate were not prudent but negligent, and with sloppiness. Therefore, the reasons for delay given in paragraph 5 of the 1<sup>st</sup> applicant's affidavit are mere allegations and are unsupported.

As regard to illegality of the decision, it is hard to see the alleged illegality (if any) as claimed by the advocate for the applicants as the same is not evidenced. The case of **Valambhia** (supra) is irrelevant in this application. The illegality which was discussed in that case related to the applicant being denied an opportunity to be heard which was apparent on the face of the record whereby the High Court issued a garnishee order against the Government, without hearing the applicant, contrary to the



rules of natural justice. Thus, that case of **Valambhia** is distinguishable from the present application.

In **Lyamuya case** (supra) at page 9 the Court of appeal observed that;

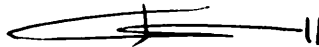
*"Since every party intending to appeal seeks to challenge a decision of either on points of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should as of right, 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 the record.....; not one that would be discovered by a long drawn argument or process"**(bold added)*

Applying the above quoted principle to this application and by referring to the records availed to this court, there is no any illegality evidenced apparent on the face of the records to be considered as good cause for this court to grant the prayers sought in this application.

For the foregoing reasons, I find and hold that the applicants have miserably failed to advance sufficient cause to warrant the grant of the extension of time. Hence, the application is accordingly dismissed. Considering the circumstances of this application, I order each party to bear its own costs.

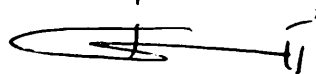
It is so ordered.

**Dated at Dar es Salaam** this 28<sup>th</sup> day of February, 2022.



**J.S. MGETTA  
JUDGE**

**COURT:** This ruling is delivered today this 28<sup>th</sup> day of February, 2022 in the presence of 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 17<sup>th</sup>, 24<sup>th</sup> and 29<sup>th</sup> applicants save the rest. Mr. Charles Mtae, the learned state attorney for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents is present and also holding a brief for Ms. Margareth Ngassani, the learned advocate for the 1<sup>st</sup> respondent.



**J.S. MGETTA  
JUDGE  
28/02/2022**