

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 104 OF 2022

*(Originating from Misc. Civil Application No. 538/2019 and Civil Case No. 166/2015,
Dar es Salaam High Court)*

SANTANA INVESTMENT LIMITEDAPPLICANT

VERSUS

D B SHAPRIYA & COMPANY LIMITED1ST RESPONDENT

SOGEA SATOM COMPANY2ND RESPONDENT

And

BARCLAYS BANK TANZANIA LIMITED3RD RESPONDENT

RULING

19/11/2022 & 24/03/2023

E. B. LUVANDA, J.

This is an application for extension of time to appeal to the Court of Appeal against the ruling (order) of Honorable Fovo, Deputy Registrar dated 15/11/2021. In the affidavit in support, the Applicant grounded that they were keen in prosecuting Civil Reference No. 15/2021 which was dismissed on 2/3/2022; There are series illegalities in the ruling of Hon. Fovo, Deputy Registrar, including denial of the right to be heard, was improperly moved by administrative letter, departed from the ruling

of Honorable Massam, Deputy Registrar dated 15/7/2029 (sic), Honorable Fovo, was *functus officio*.

In opposition, the first Respondent countered that the order of the Deputy Registrar is not appealable to the Court of Appeal rather ought to file a reference; the Applicant did not prefer any reference; there is no illegality worth for consideration by this court, as the Applicant refused to release properties after postponement of attachment instead created an interest over the same.

The second Respondent in her counter affidavit stated that she challenged the said ruling by filing reference number 17 of 2020 which was struck out by preliminary objection. That upon receiving the ruling of Honorable Fovo, she filed reference before this court but the same was dismissed.

Mr. Joseph Senga learned Counsel for the Applicant submitted that they are praying for extension of time for exclusion of time spent while diligently prosecuting reference No. 15/2021. He cited section 21(2) of the Law of Limitation Act Cap 89 R.E. 2019; **Hector Sequiraa vs Serengeti Breweries Limited**, Civil Application No. 359/18 of 2019 C.A.T. Dar es Salaam, for a proposition that filing two applications (riding two horse) is discouraged. He submitted that the decision of the

Deputy Registrar is amenable to either appeal or revision to the Court of Appeal. That illegalities pointed out in the affidavit constitute good cause for extension of time. He cited Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977 (as amended times to times): **Mbeya-Rukwa Autoparts And Transport Ltd vs Jestina George Mwakyoma** (2003) TLR, on the right to be heard; **Mohamed Enterprises Tanzania Limited vs Masoud Mohamed Nasser**, Civil Application No. 33/2012; **Arunaben Chaggan Mistry vs Nauchad Mohamed Hussein And 3 Others**, Civil Application No. 6/2016 C.A.T.; **VIP Engineering and Marketing Limited v Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2016; **Hassan Ramadhani vs The Republic**, Criminal Appeal No. 160/2018 C.A.T; **Principal Secretary, Ministry of Defence and National Service vs De ram Vallambina** (1992) T.L.R. 185, for a proposition that illegality of decision sought to be appealed constitutes a good cause for extension of time.

Mr. Roman S.L. Masumbuko learned Counsel for first Respondent opposed the application on the ground that the Applicant ought to show good cause including accounting for each day of delay, citing **Badru Isa Badru vs Omari Kilendu & Another**, Civil Application No. 64/2016

C.A.T. that herein, there is no good cause. That the Applicant was required to release the machines as per the ruling of Honorable Massam after postponement of attachment, but the Applicant never appealed. That Honorable Fovo only clarified the position taken by Hon Massam. That in Reference No. 15/2021, the presiding Judge made clear that the Applicant was not supposed to attach the machine after the ruling of Honorable Massam. That the Applicant was ordered several times to release the machines, but refused. He cited **Nelly Agatha Strobino vs Giovani Balleto** (1956) 1 EAL R 47. He submitted that the Applicant is not the one who filed Reference No. 15/2021, rather was filed by the second Respondent in this application. That negligence of the Counsel and ignorance of the law have been ruled not to be sufficient cause for extension of time. He cited **Calico Textile Industries Ltd vs Pyaraliesmail Premji** (1983) TLR 28; **Bank of Tanzania vs Said A. Marinda & 30 Others**, Civil Application No. 150/2011 C.A.T Dar es Salaam; **Wankira Bethel Mbise vs Kauka Foya**, Civil Application No. 63/1999 C.A.T. Dar es Salaam; **Hadija Adamu vs Godbless Tumba**, Civil Application No. 14/2012 C.A.T. Dar es Salaam. He submitted that there is no chance of success of the intended appeal because the Applicant was not a party to the original suit Civil Case No. 166/2015,

rather a mere Court Broker, the order is incapable of being appealed because is a declaratory order.

Mr. Michael Peter Mahende learned Advocate for the second Respondent submitted that, the second Respondent challenged the first ruling by filing Reference No. 17/2020 and after receiving the ruling of Hon. Fovo Deputy Registrar, filed another reference which was dismissed. That Hon. Massam, Deputy Registrar issued an order to postpone the attachment and sale of machinery in Misc. Application No. 538/2019 by Barclays Bank, until to date, the court has not given any findings regarding the above investigation. He submitted that it is a trite law to adduce sufficient cause for the delay and account for each day of delay. However, where illegality is put forth as a ground for an extension of time, the court has to extend time for the illegality to be addressed and not let an illegal decision stand. He cited the case of **Mary Rwabizi t/a Amufa Enterprises vs National Microfinance PLC**, Civil Appeal no. 378/01 of 2019; **Principal Secretary (supra); Arunaben Chaggan Mistry vs Naushad Mohamed Hussein & Others**, Civil Application No. 6/2016 C.A.T. (both unreported).

Mr. Mpaya Kamara learned Advocate for the third Respondent submitted that the Applicant has failed to account for each day of delay from

15/11/2021 to the date of filing this application. He cited **Badru Issa Badru vs Omari Kilendu & Another**, Civil Application No. 164/2016 C.A.T. Dar es Salaam. He submitted that the provision of section 14 (1) of the Law of Limitation Act, Cap 89 R.E. 2019 is in applicable, the proper provision for extension of time to file an appeal is section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019.

It is true that the Applicant herein is not the one who filed reference No. 15/2021. According to the affidavit of the second Respondent stated that, she challenged the ruling of Hon. Massam, Deputy Registrar by filing Reference No. 17/2020 which was struck out and upon receiving the order of Hon. Fovo Deputy Registrar, she challenged it by filing another Reference No. 15/2021 which was dismissed. It is not in dispute that the Applicant herein was impleaded in both Reference No. 17/2020 and 15/2021. Therefore, in no way the Applicant could take necessary steps by way of seeking recourse against the impugned order/ruling challenged by the second Respondent. In **Hector Sequiraa** (*supra*) the apex Court had this to say,

'Considering the circumstances, the act of appellant to lodge this application calls to be discouraged because it turns the court's proceedings to be a game of chance in finding the ways to succeed by filing unwarranted applications. We are in

agreement with Mgongolwa that this application was prematurely lodged and the applicant is riding two horses at the same time...

Had the applicant been candid enough, it could have waited for the determination of Civil Reference No. 12/2019 because its outcome has a direct bearing not only to be present application, but also to the fate of the intended appeal. In the circumstances, we agree with Mr. Mgongolwa that they ought to have waited for the outcome of Reference No. 12/2019 before filling the current application'

Herein, the Applicant could not had filed multiple recourse against the same ruling subject to references, aforementioned. Therefore, I hold the view that the Applicant has shown good cause for delay to take action.

The Applicant herein pleaded illegality on the order of Hon. Fovo Deputy Registrar *vis-a-vis* the ruling of Hon. Massam, Deputy Registrar. The first Respondents Counsel submitted that there is no illegality, because this court in Reference No. 15/2021, cleared the ruling of Hon. Fovo, Deputy Registrar as complementing what Hon. Massam, Deputy Registrar had ruling.

According to the ruling dated 15/7/2029 (sic) of Hon. Massam, Deputy Registrar in Misc. Civil Application No. 538/2019, at the last page 8, she made the following verdict, I quote in extenso,

*'This court found out that it is wise and just to grant the objector prayers to postpone the attachment and sale of the said motor vehicles and machinery attached in execution of the decree in original Civil Case No. 166/2015 **pending the investigator (sic, investigation) of the objectors claim, in order to establish that reasons stated in the objection concerning the said properties was not the one, so this court will make an order to release the said properties for the attachment to proceed as prayed, it is so ordered'***[bold added]

This order was made on 15/7/2020 (sic). On 21/10/2021, Ms. Roman Attorneys moved Hon. Fovo, Deputy Registrar administratively by a letter titled Release of Equipment in Respect of Execution in Civil Case No. 166/2015 Between Sogea Satom Company Versus D B Shapriya & Co. Limited; making reference to the order/ruling of Hon. Massam, Deputy Registrar dated 15/7/2020 presumably is the same erroneously dated 15/7/2029. Thereafter, Hon. Fovo, Deputy Registrar correctly invited parties to address him, where Mr. Kamara for the Objector and Mr. Fraterine Mung'ere for Applicant alluded that there is no valid attachment order for the Court Broker one Santana Inv. Ltd to continue holding the said properties. On the other hand Mr. Mkilia Counsel for the first Respondent held a different view that the ruling of the court postponed the sale and attachment pending the investigation of the

objectors claim. Hon. Fovo, Deputy Registrar, seemingly ignored this advice and nodded in agreement with Mr. Kamara and Mr. Mung'ere. In his ruling, Hon. Fovo, made the following order,

'Looking at the above words of the court from the ruling dated 15/7/2020, it is clear that both attachment and sale were postponed pending the investigation proceedings. With due respect, I do not see any qualification or condition in that order. I am aware that in order for Court Broker to acquire jurisdiction over attachment and sale proceedings there must be a court order with appointment to do so. In the instant case, I firmly stand on the view that those powers seized (sic, ceased) from the date when the above ruling was pronounced.

*In other words, **the said properties were actually released from that date pending the outcome of the said objection proceedings and, if needed, the court will make an order for re-attachment accordingly. I therefore direct Court Broker one Santana Inve. Ltd to comply with the orders of this court issued on 15/7/2020 by reverting the said properties to the owner unless there is a valid lawful order which directs otherwise'**[bold added]*

To my view, the two orders above, on the face of it without even the use of glancy, are marred with illegality featuring vividly.

These orders are also problematic on its wordings and brings confusion on its execution and compliance, leaving the executing officer in dilemma. For instance the first order its wording is coached on future tense (... so this court **will** make an order **to release**). Seemingly the confusion was also attributed by failure to extra the drawn order, which invariably could have cured the ambiguity. For another thing, the argument of the learned Counsel for second Respondent, that the objection proceedings filed by Barclays Bank Tanzania, is still pending and the court has not made or given any findings regarding the above investigation, is valid.

In the case of the **Principal Secretary** (*supra*), it was stated,

'In our view when a point at issue is one alleging illegality of the decision sought to be challenged, the court has duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to make appropriate measures to put the matter and the record straight'

The application for extension of time is merited, in that the Applicant has demonstrated both sufficient cause to extend time and good cause for the extension of time.

The Applicant is granted an extension of time of thirty (30) days counting from the date of delivery of this ruling.

The application is granted with costs.



E.B. LUVANDA

JUDGE

24/03/2023