

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 484 OF 2022

*(Arising from the Decision of the High Court of Tanzania, Dar es Salaam District
Registry in Civil Case No. 140 Of 2000)*

1. **MANGENYULE IRUMBIRA**
2. **SULEMANI NASSORO**
3. **JUMANNE MWINYIMVUA**
4. **SEVERINI SENYA**
5. **DANFORD MTLA**
6. **YAKOBU MTLA**
7. **LUKAI SENYA**
8. **ALBANUS NGAMBA**
9. **JIMI MINJA**
10. **YUSUPH MOHAMED**
11. **SELEMANI ATHUMANI**
12. **SALUMU LUBAWA**
13. **EVARISI MUHAGAMA**
14. **ANTHONI MAZIKU**
15. **RAMADHANI BAKARI**
16. **KANUTI SENYA**
17. **OMARY MUSSA**
18. **ZUBERI JU JUMA**
19. **AZIZA MANENO KINGO**
20. **AMINA MUSSA**

APPLICANTS

21. ALLY MKUMBI
22. ABELI GAMBI
23. FATUMA SAIDI
24. SAIDI AHAMADI
25. ABDALA ISSA
26. FILBERT MWINJANO
27. MOSHI FUNUNGULU
28. SAID SULEIMANI
29. VASCO BRAWN
30. JUMANNE SADALA
31. SHAIBU NANKOROA
32. ELIZA KALINGA
33. CLETUS KALUMUNA
34. CHUKI SAIDI
35. HASSANI KAPASA
36. MOHAMED NGUMANYA
37. ALOISI MTANGILE
38. ELIAZA MWAKATIMBO
39. SEIF SELEMANI
40. THOMASI ALOO
41. SALUMU KONDO
42. MOHAMED DUNDA
43. MOHAMED ONYOOVYO
44. HUSSEIN HUSSEIN
45. ANNA M. WAIKINA
46. FARIDA KINYWERO
47. FRATEL STEPHANO
48. ISSA SINGANO
49. HIDAYA ADUI
50. YUSUPH HAJI

APPLICANTS

- 51. YOHANA LUSINDE
- 52. MWANAHAMISI PEMBE
- 53. HAMZA ABDALAH
- 54. MOHAMED MBENA
- 55. RAZARO TIME
- 56. AHAMADI ABDALLAH

APPLICANTS

VERSUS

DAR ES SALAAM CITY COUNCIL RESPONDENT

RULING

09/02/2023 & 30/03/2023

BWEGOGGE, J.

The applicants named herein above have instituted an application in this court praying for an extension of time in which they may file the notice of appeal to the Court of Appeal out of time against the decision of this court in Civil Appeal No. 140 of 2000.

The background of this matter may be stated briefly as thus. The applicants possessed the landed property (suit land) at Lumo, Yombo Vituka in Dar es Salaam which they inherited from their forefathers who occupied the land under customary law for time immemorial. However, in 1988, the applicants were served with notice of an impending demolition exercise of all houses in disputed land and the applicants were given notice to vacate prior to the demolition, lest the city council would conduct demolition at the applicants' (occupiers') costs. The applicants objected to the notice to vacate the disputed land and filed an application in the Dar es Salaam Resident Magistrates' Court for an interim injunction in Misc. Civil Application NO. 47 of 1998. The trial court had granted an injunction as prayed. However, allegedly, the respondent, despite the injunction of the trial court, proceeded to demolish the applicants' houses on the disputed land. Hence, the applicant commenced civil proceedings against the respondent in this court, in Civil Case No. 140 of 2000, for compensation for loss suffered following the demolition of their houses and general damages.

This court, upon hearing the parties herein, reached a decision that the claim was untenable as the subordinate court could not determine the issue of ownership of disputed land before it issued the injunction. Therefore, this

court found that the prayed reliefs could not be granted without proof of ownership of the disputed land. Therefore, the suit was dismissed accordingly.

The applicants, being aggrieved, they filed an appeal in the Court of Appeal in 2014 which was struck out on the technical ground on 24th July 2017. The second attempt to institute the appeal to the superior Court was likewise hampered by the technical huddle which necessitated its withdrawal on 26th September, 2022; hence, this application.

The applicants were represented by Jamhuri Johnson, learned advocate, and the respondent was represented, at an initial stage of this proceedings, by Ms. Vivian Method, the State Attorney. However, when the matter herein was brought for hearing on 09th February, 2023, the counsel for the respondent didn't appear in court without notice; hence, on prayer by the applicant's counsel, the hearing proceeded *ex parte* against the respondent.

In elaborating the facts deposed in the affidavit supporting the application, the counsel for the applicants submitted that the application herein was prompted by the withdrawal of the appeal in the Court of Appeal in Civil Appeal No. 116 of 2019 on the ground of procedural issue. That the

applicants had been all through, for years, diligently prosecuting a case in court. That diligence in prosecuting a case is a good ground for extension of time. The Counsel cited the case of **Mary Mchome Mbwambo and another vs. Mbeya Cement Ltd**, Civil Application No. 271 of 2001 of 2016 Court of Appeal (unreported).

Further, the counsel submitted that the decision of this Court is tainted by illegality. This being the case, opined the counsel, illegality is good ground for grant of extension. The mind of this court was drawn to the case of **Mrs. Mary Kahama (Attorney of Georgia George Kahama) and another vs. H. A. M. Import and Export (T) Ltd and 2 others**, Civil Application No. 52 of 2017, CA (unreported). The Counsel has also directed this court to the facts deponed in paragraphs Nos. 06 and 7 of the affidavit purporting to establish the point of law to be considered. On account of the above, the counsel for the applicants prayed this court to grant the application.

The issue before this Court is whether the application herein has substance.

It is settled rule of law that the extension of time can only be granted for good and, or sufficient cause. The factors to be considered by this court in deciding whether the grant of extension may issue, are appositely

enumerated in the case of **Lyamuya Construction Co. Ltd vs. the Board of Registered Trustees** (Civil Application 2 of 2010) [2011 TZCA 4 of young women as thus:

- i) The applicant must account for all the period of delay.
- ii) The delay should not inordinate.
- iii) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- iv) If the court feels that there are other sufficient reasons, such as existence of point of law of sufficient importance; such as illegality of the decision sought to be challenged.

The question arising herein is whether the applicants have advanced good cause for grant of extension. The record herein entails that the extension to file notice to the Court of Appeal was granted on 28th November, 2018. The applicants duly filed their appeal in the Court of Appeal which was later withdrawn on 26th September, 2022. There is no material put before this court on what ground the appeal was withdrawn. The affidavit filed hereto and the order of the superior Court doesn't help this Court to apprehend the actual procedural error/technical ground upon which the appeal was withdrawn.

This being the case, I fail to arrive at the conclusion that there has been technical delay in respect of the time spent in the prosecution of the appeal on the ground that for the principle of technical delay to be invoked, the appeal should have been instituted within the prescribed time. See the case of **Fortunatus Masha vs. William Shija and Another** (1997) TLR 155

I refuse to purchase the applicant's counsel submission in that the time spent by the applicants in diligently prosecuting their case should be taken into account on the ground that mistakes/negligence on part of the applicants or their counsel is not good ground for extension of time. See the cases of **Wambura N.J. Waryuba vs The Principal Secretary Ministry of Finance & Another**, Civil Application No. 320 of 2020 (unreported); **Exim Bank (Tz) Ltd vs Jaqueline A. Kweka**, Civil Application No. 348 of 2020 (unreported), and **Omar Ibrahim vs Ndege Commercial Services Ltd**, Civil Application No. 83 of 2020 (unreported). I need not reiterate that there are no materials put before this court to gauge whether the withdrawal of the appeals from the superior Court was occasioned by the counsel's mistake(s) or otherwise.

Apart from the above, this court observed that the appeal was withdrawn at the superior Court on 26th September, 2022 as per the order of the Court.

And, the record of this Court entails that the application herein was instituted on 01/11/2022. Thus, it is apparent that it had taken the applicant more than 30 clear days to institute the application herein. The rule is that the applicant should account for each day of delay. See the cases of **Hawa Issa Nchirya vs Ramadhani Iddi Nchirya** (Civil Application No 27/03 of 2021) [2021] TZCA 450 and **Mathew Kitambala vs. Robson Grayson and Another** (Criminal Appeal No. 330 of 2018) TZCA 572. It suffices to point out that the applicants have likewise, failed to account for the delay to file the application in this Court.

The applicants' counsel forcefully submitted that the decision of this court is tainted by illegality. That this ground alone is sufficient cause for grant of extension. While agreeing with an assertion that illegality is sufficient cause for grant of extension of time sought [**Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra)], the circumstances of this case don't warrant this court to invoke the principle. It settled law that the alleged illegality must be of sufficient importance, apparent on the face of the record and not that which would be discovered by a long-drawn argument or process. See the cases of **Jubilee Insurance Co. (T) Limited**

Company (T) Ltd vs Mohamed Sameer Khan (Civil Application No. 439/01 of 2020) [2022] TZCA 623. It is self evident that the counsel for the applicant refrained to provide particulars of the alleged illegality when he submitted in this court. He merely directed this court to facts deponed in the affidavit, specifically, to paragraphs 6 and 7 of the same.

In paragraph 6, the facts deposed are to the effect that the trial judge erred in arising the question of ownership of the disputed land in determining the suit for compensation for unlawful demolition and removal of the applicant from disputed land, and whether the trial judge was correct to revise the decision of the lower Court. And, in the 7th paragraph, the deponed facts are to the effect that the trial judge erred for failure to consider the illegality in respect of the procedure and process used by the respondent to acquire the land from the applicants without compensation.

I am of the considered opinion that the deponed facts don't establish illegality on the decision of this court but grounds of appeal. The trial judge was clear in that he could not award compensation without proof of ownership of the suit land. The trial judge didn't revise the decision of the lower court but commented that the decision of the lower Court didn't determine the question of ownership.

The question whether the respondent's process to acquire the land from the applicant without payment of compensation was legal or otherwise, can't impute illegality on the decision of this court. Be that as it may, the legality or otherwise of the impugned land acquisition by the respondent is a matter of fact needing evidence. Thus, the point of illegality invoked by the respondent is misconceived.

For reasons I endeavoured to give herein above, I find that the applicants have failed to establish good and, or sufficient cause for grant of extension of time. Consequently, the application herein is hereby dismissed. As the applicant was heard *ex parte*, I make no order for costs.

Order accordingly.

DATED at DAR ES SALAAM this 30th March, 2022.



A handwritten signature in blue ink, appearing to read "O. F. Bwego", written over a horizontal line.

O. F. BWEGOGÉ

JUDGE