

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 452 OF 2022

*(Originating from the High Court of Tanzania, Dar es Salaam
District Registry in Civil Case No 265 of 2020)*

VEHICLE AND EQUIPMENT LEASING (TANZANIA) LTD..... APPLICANT

VERSUS

JEREMIAH CHARLES NYAGAWA..... RESPONDENT

RULING

09/02/ & 06/04/2023

BWEGOGGE, J.

The applicant herein above named has instituted an application in this court praying for an extension of time within which the applicant may file an application for review against the ruling and order of this court in Civil Appeal No. 265 of 2020. The application is brought under the provision of section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019] and supported by the affidavit of the counsel for the applicant.

The background of this matter depicted by the record of this court is as thus: The applicant was aggrieved by the judgment and decree of the District Court of Mvomero in Civil Case No. 06 of 2019 dated 27th July, 2020 and preferred an appeal in this court. The respondent had raised an objection at the earliest opportunity on point of law in that the purported appeal was hopelessly time barred. The objection was unanswerable on part of the applicant herein whereas her counsel eventually conceded to the objection. Consequently, this court dismissed the appeal.

Later on, the applicant lodged the application (Civil Review No. 9 of 2021) praying this court to review its dismissal order in Civil Appeal No. 265 of 2020 dated 27th July, 2020. Unfortunately, the application was objected by the respondent and eventually struck out on technical ground. Thereafter, the applicant lodged an application (Misc. Civil Application No. 246 of 2022) in this court praying for extension of time within which she may file an application for review. Likewise, the application was objected and struck out by reason of defect in the pleading filed by the applicant. Undaunted, the applicant filed the application herein.

The applicant and respondent herein were represented by Mr. Hilal Hamza and Ms. Suzana Mafwere, learned advocates.

In elaborating matters deposed in the affidavit supporting the application herein, Mr. Hamza submitted that this court is obliged to consider whether the applicant has sufficient cause to be granted extension sought. That the sufficient cause encompasses various factors including whether the applicant diligently took steps to take legal actions. That the applicant herein apprehends that the decision of this court was tainted with illegality which is sufficient ground for extension of time. The counsel cited the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application 02 of 2010) [2011] TZCA.

The counsel asserted that the affidavit supporting the application herein clearly depicts the fact that the applicant has been taking appropriate legal action to address her grievances in respect of the impugned decision of this court. And, the counsel opined that it is obvious that the applicant has not slept on her right but acted diligently, save the legal hurdles which had obstructed the ends of justice.

Further, the Counsel submitted that all the time lost by the applicant was utilized in commencing proceedings in this court, of which were found defective; hence, it amounted to technical delay. The counsel cited the case of **Fortunatus Masha vs William Shija and Another** (1997) TLR

155 to bolster his point.

Apart from the above, the counsel argued that the existence of a point of law in respect of an impugned decision amounts to sufficient ground for grant of application for extension. That the applicant has raised a point of law which she strives to be attended by this court in that the court dismissed the suit on the ground of time limitation without knowledge of applicable law which catered for electronic filing procedure. The cases of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra); **Principal Secretary, Ministry of Defence and National Service vs Devram P. Valambia** (1992) TLR 182 and **Mary Rwabizi T/A Amuga Enterprises vs National Microfinance PLC** (Civil Application 378 of 2001 of 2019) [2020] TZCA 355 were cited to validate the argument. On the above grounds, the counsel for the applicant prayed this application to be granted.

On the other hand, Ms. Mafwere fiercely contested the application herein. She contended that the invoked plea of illegality is vague. That it is not stated in which aspect the decision of this court is tainted with illegality. The counsel admitted that they had raised an objection to the instituted appeal based on time limitation whereas the counsel for the applicant

conceded the fact that the appeal was filed out of prescribed statutory time.

The counsel opined that the previous appeal and consequential applications commenced by the applicant were dismissed and, or stuck out on the ground of negligence on part of the applicant's counsel. The counsel referred the case of **Director General PCCB vs Frank Ipyana**, Labour Revision No. 23 of 2009, HC (unreported) whereas the court restated the principle of law in that negligence is not a sufficient cause for failure to comply with the law. And, the counsel concluded that the allegation of illegality is likewise misconceived. She prayed the application herein to be dismissed with costs.

In rejoinder, Mr. Hamza countered that he is not obliged to articulate each particular of the alleged illegality. He cited the case of **Mary Rwabizi T/A Amuga Enterprises vs National Microfinance PLC** (supra) to make his point and stated that the case of **Director General PCCB vs Frank Ipyana** (supra) is not applicable in this case as the applicant thereof failed to furnish sufficient cause for grant of extension which is not the case herein. Otherwise, the counsel sustained his stance by reiterating his submission in chief that the decision in the appeal case was made without regard to the operating law, which amounts to illegality.

This is all about the legal contest marshalled by the counsel herein.

The issue for determination is whether the applicant has advanced sufficient cause for grant of enlargement of time in which she may file the application for review.

The provisions of section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019] enjoins this court with power to extend the period of limitation for filing an appeal and, or application, for any reasonable or sufficient cause. Thus, the applicant is legally obliged to furnish good cause before she may be granted the extension sought. In the same vein, it is settled law that the applicant who seeks extension of time should account for each day of delay. See in this respect 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; **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.

The counsel for the applicant has submitted that the applicant had not slept on her right but diligently taken appropriate legal actions. Hence, the time elapsed should be taken to be technical delay. I have gone through the record of this case of which its chequered background has

been stated. The impugned decision which the applicant is seeking extension of time to file review proceedings was entered on 26th May, 2021. It is now nearly two years that the applicant is struggling to find a way to defeat the impugned decision. It is this inordinate delay that the counsel accounted that the applicant was busy pursuing her right by taking appropriate legal actions. The record has it that the first application for review was struck out for wrongful citation of the enabling provision. The second application was found incompetent for being supported with a defective affidavit. Hence, this application. The pertinent question arises herein; whether the applicant's previous endeavour amounts to diligence. I am afraid that the answer is negative. I have directed my mind to the case of **Jubilee Insurance Co. (T) Limited Company (T) Ltd vs Mohamed Sameer Khan** (supra) at pg. 15 whereas the court had this to say:

"It should also be emphasized that the negligence of an advocated or his ignorance of the procedure, is not an excuse and doesn't constitute a sufficient cause for extension of time."

Further, citing the case of **Exim Bank (Tz) Ltd vs Jaqueline A. Kweka**, (Civil Application 348 of 2020) [2021]TZCA 67 the court held:

" The firms are manned by lawyers who ought to know court

procedures. In fact, failure of the advocate to act within the detect of law cannot constitute a good cause for enlargement of time."

In the same vein, the court, citing the case of **Omar Ibrahim vs Ndege Commercial Services Ltd** (Civil Application 83 of 2020) TZCA 64 stated as thus:

"..... neither ignorance of law nor counsel's mistake constitutes good cause. Lack of diligence on part of the counsel is not sufficient ground for extension of time.

See also the case of **Wambura N.J. Waryuba vs The Principal Secretary Ministry of Finance & Another** (Civil Application No. 320 of 2020) TZCA 66 in this respect. Based on the above, I am bent to subscribe to the counsel for the respondent in that the time taken to prosecute previous applications which were struck out on ground of the mistakes of the legal practitioners representing the applicant cannot be attributed to diligence. I would add that the time spent by the applicant prosecuting incompetent applications in this court cannot be equated to technical delay as asserted by the applicant's counsel. I may safely conclude that the applicant has failed to furnish sufficient cause for delay to be granted enlargement of time in which she may file the application for review of the decision of this court.

At this juncture, I direct my mind to the allegation that the impugned decision of this court is tainted with illegality; thus, extension should be granted to put the record of this court right. I subscribe to the assertion made by the counsel for the applicant in that it is settled law of this land that when the point at issue is one alleging illegality of the decision being challenged, the court has to allow the extension of time to provide room for ascertainment of the point and take requisite measures to put the record right. See the cases of **Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** (supra) and **VIP Engineering and Marketing Limited and Two Others vs City Bank Tanzania Limited**, Consolidated Civil Reference Nos. 6,7 and 8 of 2006 (unreported) in this respect.

However, it is likewise the rule of law that the alleged illegality in question 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** (supra) and **Lyamuya Construction Co. Ltd. vs the Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra).

In tandem with the above, the alleged illegality should not be such that:

"...it will take a long drawn process to decipher from the impugned decision the alleged misdirection or non-directions on points of law." See the case of **Ngao Godwin Losero versus Julius Mwarabu** (Civil Application 10 of 2015) TZCA 302.

In the case at hand, it is alleged that the trial judge had dismissed the appeal lodged by the applicant by invoking the wrong provision of the law. That the trial judge had looked into the receipt, not the electronic record, to arrive at the conclusion that the appeal was time barred. For clarity, I opt to reproduce the impugned decision of this court for examination.

"I had time to go through the records. I am satisfied that this appeal was filed after 92 days from the date of the impugned decision contrary to the provisions of section 3 and Part II item I of the Schedule to the Law of Limitation Act, [Cap. 89 R.E 2019]. Further, the said provision requires to dismiss an appeal filed out of 90 days.

In the event, the appeal is hereby dismissed for being time barred."

Based on the above quotation, it needs evidence to prove the fact that the trial judge's research didn't comprise the electronic filing process as it is not obvious on the face of the record to what extent was the judge's research. It is apparent that neither the affidavit supporting the application herein nor the submission of the applicant's counsel provided

clear particulars of the trial judge's misdirection or non-direction in respect of the timeousness of the dismissed appeal

In tandem to the above, it is the fact on record that one John James, the counsel for the applicant who appeared in court, conceded to the objection in that the appeal was lodged out of time. Therefore, I am of the settled view, as rightly asserted by the counsel for the respondent, that the plea of illegality raised herein is misconceived.

In the event, this court finds that the applicant herein failed to furnish sufficient cause for the delay to be entitled to grant of enlargement of time. Likewise, the applicant failed to demonstrate the point of law sufficiently to warrant grant of extension of time sought. The application is hereby dismissed with costs.

Order accordingly.

Dated at Dar es Salaam this 06th April, 2023.




O.F. Bwego
JUDGE