IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

AT TABORA

MISC. LAND APPLICATION NO. 8 OF 2022

(Arising from Land Case Appeal No. 56 of 2011, Originating from Land Case no. 19 of 2009 of the District Land and Housing Tribunal for Kigoma, at Kigoma)

THE REGISTERED TRUSTEES OF THE ROMAN CATHOLIC DIOCESE OF KIGOMA .....APPLICANT

VERSUS

JACKSON B. RUMENYERA

AND 17 OTHERS.....RESPONDENTS

RULING

Date of Last Order: 13/06/2023

Date of Delivery: 19/06/2023

MATUMA, J.

The applicant through Mr. Akram Magoti learned advocate lodged this application for extension of time to file Notice of Appeal to the Court of Appeal against the decision of this Court (RUMANYIKA, J) delivered on 10/02/2014 in Land Case Appeal No. 56 0f 2011.

In the impugned Judgement, this Court quashed the decision of the District Land and Housing Tribunal for Kigoma

which was entered in favour of the applicant herein and set aside orders made thereto. The decision of this court was thus in favour of the respondents herein.

The applicant was aggrieved with such decision and intended to appeal to the court of appeal of Tanzania. She lodged the requisite notice of an intention to appeal but could not take the necessary and essential steps thereafter. In that respect her appeal in the Court of Appeal was struck out.

The Applicant is still eager to appeal to the Court of Appeal hence this application by way of Chamber Summons under S. 11(1) of Appellate Jurisdiction Act, [Cap. 141 R.E 2019) accompanied by two affidavits sworn by Revocatus M.K Mtaki learned advocate and Rev. Fr. Deus Rubamba respectively.

Before me, the applicant was represented by Mr. Akram Magoti learned advocate while the 1st to 17th respondents were represented by Mr. Kamaliza Kayaga who was holding brief of Mr. Kelvin Kayaga learned advocate. The 18th respondent was absent without notice.

In support of his application, Mr. Akram Magoti adopted the contents of the two affidavits. He further clarified the grounds upon which this application has been made. He contended that the decision of this Court is prompted with illegalities which was a denial of the right to be heard to the 18th respondent (Kasulu District Council) and that; some of the respondents did not appear to testify and prove their respective claims regard being that the

suit at the trial court was not a representative suit. The learned advocate believing that such was illegality fortified his arguments by the decision in the case of ***Principal Secretary, Ministry of Defence and National Services vs Devram P. Valambia (1992) TLR 385*** to the effect that illegality is a good cause for extension of time.

The learned advocate further argued that the applicant at all times was in Court struggling for his rights as deposed under paragraphs 6,7,8,11 and 12 of Mr. M.K. Mtaki's affidavit and therefore was not sleeping on her rights. He referred this court to the case of ***Emmanuel Rurihafi and Janeth Jonas Mrema v Janas Mrema, Civil Appeal no. 314 of 2019*** (unreported) to the effect that when a party has been in Court pursuing his rights, that is a sufficient ground for extension of time.

Mr. Magoti further asserted that during the pendency of the notice of appeal in the Court of Appeal, the parties were trying to settle the dispute out of Court which led to the delay in taking necessary steps in the Court of Appeal as a result the notice of appeal was struck out on 01/04/2022.

He submitted that, this application was filed on 11/04/2022 which was only 10 days after the Court of Appeal had struck out her Notice of appeal. The learned advocate argued that the ten days supra were spent for preparations and filing this application and therefore the delay in such 10 days is reasonable and well accounted to warrant this application to be granted.

In reply thereto, Mr. Kamaliza Kayaga contended that extension of time is under Court's discretion upon good cause shown by the applicant. He argued that in the current application the applicant has failed to account for each day of the delay.

He submitted that the two affidavits have not accounted for the ten (10) days delay supra and instead such affidavits narrate the historical background of the matter.

On the ground of illegality Mr. Kamaliza Kayaga argued that the applicant has no locus standi to argue on behalf of other parties who have not complained to have been denied any right to be heard.

In rejoinder, Mr. Magoti reiterated what he submitted in chief. He added that it is true in the two affidavits there is no any paragraph accounting for the 10 days stated supra however he has accounted them orally in the course of his submission as was already declared in the Chamber Summons that the application apart from the affidavits, it shall as well be supported with other arguments to be raised at the time of hearing.

The issue is whether the applicant has accounted for each day of the delay and therefore established good cause to warrant the grant of extension of time in this application. The guidelines for granting and or refusing to grant the applications of this nature has been set in various Court of Appeal decisions including that of ***Hamis Babu Ally Vs The Judicial Service Commission And 3***

Others, Civil Application No. 130/01 Of 2020. The guidelines set are:

"i) To account for all period of delay

ii) The delay should not be inordinate

iii) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and

iv) The existence of a point of law of sufficient importance, such as the illegality of the decision sought to be appealed against."

Now, I should determine whether the applicant has passed through such guidelines. It is not in dispute that there are ten (10) clear days of the delay as from 01/04/2022 when the notice of appeal by the applicant was struck out by the Court of Appeal to 11/04/2022 when the instant application was filed. The parties in accordance to their respective submissions are as well not in dispute that such ten days have not been accounted in the two affidavits of the applicant. Mr. Akram learned advocate has however submitted that since he has explained during the hearing of this application that the ten days were spent in preparing this application and filing the same, such explanation should be accepted as a good cause.

On my side, I join hands with Mr. Kamaliza Kayaga learned advocate that the explanations by the learned advocate for the applicant that the ten days were spent in preparing and filing

the instant application are words from the bar. They are worthless and cannot be acted upon. Had they been important in the Applicant's application, they could have been taken on board in the applicant's affidavits so that the Respondent could have got opportunity to counter them in the counter affidavit. Neglecting to depose them in the affidavits renders the submissions made by Mr. Akram, afterthoughts.

In the case of **Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 03 of 2007**, (unreported) the Court of Appeal observed that:

> *"...delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."*

In the instant matter the applicant has not accounted not only for one day but all the ten days. His afterthought arguments and purported explanations have no room in the administration of justice. They are accordingly rejected.

In respect of other arguments that the applicant has at all times been in court corridors fighting for her rights and thus did not sleep on her rights, I find no need to dwell much in it. As rightly argued by Mr. Akram and the authority he cited to the effect that when a party in good faith and without negligence has spent some time in court pursuing his or her rights which results into a delay to take an appropriate measure, such a delay is a technical delay and not actual. Therefore, the delay would normally be excused and

the extension granted. In that respect the applicant is not condemned on the period he was in court corridors. He is however liable for the ten days he slept on her rights as stated supra.

About the alleged illegality, I find that the same is not there. It is a mere allegation which requires prolonged arguments by the parties. In the first premises the applicant submitted that the 18th respondent was not given an opportunity to be heard. The 18th respondent herself did not complain as such. We are not availed with the court proceedings by the applicant to satisfy ourselves whether or not the 18th respondent did not abrogate her right to be heard by her own. Taking the fact that the 18th respondent has not complained anyhow of such anomaly, Mr. Akram's arguments remain to be allegations with no base to stand.

Also, as rightly argued by Mr. Kamaliza Kayaga, the applicant is not an advocate of the 18th Respondent. She is estopped to purport as a representative thereof. The 18th respondent has not even turned up at the hearing of this application despite of having been dully served. We don't know whether during trial the trend was the same, i.e she might have been served but defaulted appearance.

As about some respondents to have not been testified at the trial, that is a matter of quality and weight of evidence. It is as if the applicant is arguing that for none appearance of some respondents to testify by themselves, their respective claims should have not been granted. It is my firm view that that is not a legal

point. It goes to the quality and weight of evidence on record on whether it sufficed to grant the claims to all respondents or some of them. That question was dealt by both the trial tribunal and this court. It cannot therefore be the ground for extension of time as in no way the quality and weight of evidence delayed the applicant to appeal. I therefore on the question of illegality reject the arguments of Mr. Akram on the strength of what was stated in the case of ***Hamis Mohamed vs Mtumwa Moshi, Civil Application No.407 of 2009 (Unreported)***, where the Court of Appeal;

> *"It follows then that an allegation of illegality by itself suffices for an extension of time. However, such an allegation of illegality must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process..."*

The illegalities and irregularities alleged by the applicant are not apparent on the face of the record. I reject such allegations.

In the circumstances of what I have explained supra, I find no merit in the instant application. Consequently, I struck out this application with costs. It is so ordered.

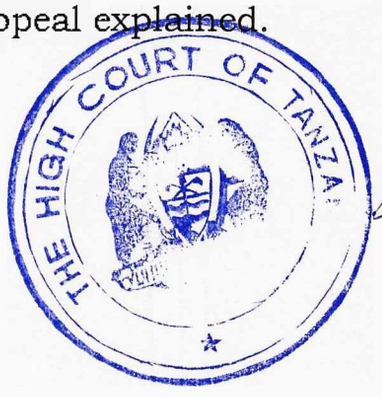
MATUMA

JUDGE

19/06/2023

ORDER

Ruling delivered in chambers in the presence of advocate Akram Magoti for the applicant and advocate Kelvin Kayaga for the 1st to 17th respondents and in the absence of the 18th respondent. Right of appeal explained.



MATUMA

JUDGE

19/06/2023