

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 390 OF 2023

(Arising from the Civil Revision No 49 of 2022)

EDWARD MSAGO..... APPLICANT

VERSUS

DRAGON SECURITY SERVICERESPONDENT

RULING

27th & 30th June 2023

MKWIZU J:

This matter has a chequered history. The deposed facts reveal that the applicant was employed by the respondent until 05/04/1997 when his employment ceased through a summary dismissal. Contesting termination of his employment, the applicant appealed to the Conciliation Board which approved his appeal ordering the termination of employment instead of summary dismissal, the decision that was later sustained by the Minister for Labour.

The applicants went for execution proceedings No. 62 of 2001 in which the repatriation expenses and subsistence allowance were disallowed on the

reasons that applicant was not entitled to the same. The applicant was not happy. His appeal to this court was allowed and the entire proceedings of the lower court, judgment, and decree were accordingly nullified by Othman J (as he then was) and the Applicant was ordered to enforce the Ministers' decision as if were a decree of the court.

He again relodged the execution of the Minister's decisions at Kisutu Resident Magistrates Court followed by a warrant of attachment. The respondent did not comply instead she successfully filed revisional proceedings in this Court via Civil Revision 49/2008 on which the warrant of attachment was lifted, and the entire application allowed. The applicant is now before this court seeking the following orders:

1. This honorable Court be pleased to grant an extension of time within which to apply for leave to appeal and secondly, once the time is so extended, leave be granted to file a notice of appeal, to serve with a letter applying for copies of the ruling. Drawn order and proceeding for the purpose to appeal against the decision in civil revision No. 49 of 2008 Dated 28th April 2009 by Hon. SHANGWA, J.

2. Costs be provided for

3. Any other relief(s) this honorable court may deem fit and just to grant.

The application is made under section 14(1) of the Law of Limitation Act Cap 89 RE 2019 supported by the applicant's affidavit sworn on 26th August 2022. The hearing was orally made on 27/6/2023 in the absence of the respondent whose attendance was not secured even after the publication of the notice of the hearing through Uhuru Newspaper dated 11th November 2022. During the hearing, the applicant who was in person sought an indulgence of the court to allow the application without more.

I have considered the application. According to his affidavit, the impugned decision was delivered on 28th April 2009, and from there he complained to Judge Kiongozi and his Lordship. Hon Chief Justice and through a letter dated 28/12/2015 the applicant was advised to either appeal out of time or apply for Revision in the Court of Appeal against the Ruling of Honorable Justice Shangwa. His Application No. 688 of 2016 in this very court for extension of time to file revisions was dismissed on 11/10/2019 for lacking merit.

Tirelessly, on 7th October 2020, the applicant lodged civil application No. 433/2001 of 2020 to the Court of Appeal for exemption from payment of fees, Civil Application No. 560/2001 of 2020 to the Court of Appeal praying for an extension time within which to file revision followed by civil revision No. 556/2001 of 2021 before Court of Appeal Tanzania struck out, on 1st April 2022.

The applicant's application is also pegged on the irregularities in the High Court judge in Civil Revision No. 49 of 2008 and that he is an aged, lay person not conversant with the legal proceedings.

It is noted that the applicant is seeking for extension of time to appeal to the Court of Appeal. This application was thus to be premised on the provisions of section 11 (1) of the AJA instead of section 14 (1) of the Law of Limitation Act. I am however aware of the settled principle that wrong citation is not fatal provided the court is vested with the power to do what it is invited to perform and therefore proceed to determine the application on merit irrespective of the wrong cited provisions of the law.

Incontestably, this court's power to extend time is only exercisable upon sufficient cause given by the applicant. See for instance **Tanzania**

Coffee Board v. Rombo Millers Ltd, Civil Application No. 13 of 2015, **Yazid Kassim Mbakileki v. CRDB (1996) Ltd Bukoba Branch & Another**, Civil Application No. 412/04 of 2018; and **Sebastian Ndaula v. Grace Rwamafa (legal personal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014(all unreported), to mention but a few. Three reasons are pleaded in this application, Ignorance of the legal proceedings, technical delay, and illegalities on the impugned decisions.

In paragraph 16 of the affidavit, the applicant is pleading with old age and ignorance of the legal procedure as one of the grounds for the delay. The paragraph reads:

"16. That being a man of 73 years of age and a lay person not conversant with any legal procedures and time from 2006 to 2022 the matter he was in court corridors. "

It should be stated outright that ignorance of legal procedure has never constituted good cause for the delay. This position was pronounced in **Metal Products Ltd v. Minister for Lands & Director of Land Services** [1989] T.L.R. 5, that:

"Categories of explicable inadvertence causing delay to make an application do not include ignorance of procedure..."

Similarly in **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2011; the Court stated as follows:

"... I will right away reject the explanation of ignorance of the legal procedure given by the applicant to account for the delay. As has been held times out of number, ignorance of the law has never featured as a good cause for an extension of time ... To say the least, a diligent and prudent party who is not properly seized of the application procedure will always ask to be apprised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."

The same position was expressed in **Farida F. Mbarak and Another v. Domina Kagaruki and 4 Others**, Civil Reference No. 14 of 2019 (unreported) where it was stated that:

"The law was therefore not new and the applicant's contention that the law was not accessible or that there was confusion in what the law, as rightly found by the learned single Justice, was

nothing but a plea of ignorance of law which has never been accepted as a sufficient reason or good cause for an extension of time. "[Emphasis added)

I subscribe to the above authorities of the Highest Court of the Land and hold that the plea of ignorance of the legal procedure by the applicants is not of any support to this application.

Secondly, the applicant posed grounds of illegality on the impugned decision. The Court's standing where the ground of illegality of the impugned decision is raised is clear and well settled. In the case of **VIP Engineering and Marketing Limited and Two Others vs Citibank Tanzania Limited**, Consolidated Civil Reference No.6, 7, and 8 of 2006, it was held:

"It is settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for extension of time ... regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."

I have considered this ground along with the deposed facts in the supporting affidavit. Apart from the averments in paragraph 25 of the affidavit, there are no details of the said points made in the affidavit or the

oral submissions by the applicant in court leaving the court without a clue of the points and whether they are real points amounting to sufficient reasons for extension of time. I say so because for illegality to qualify a ground for extension of time, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court. See **Lyamuya Construction Company Ltd vs. Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). The applicant was thus, in this application, required to unveil to the court the alleged points for evaluation failure of which renders this point baseless.

The third point is a technical delay. The applicant's supporting affidavit has narrated a chain of events explaining what transpired from the delivery of the impugned decision to the date of filing this application in court. The applicant has filed a series of applications in this court and the Court of Appeal all aimed at challenging the decision dated 28th April 2009 in Civil Revision No 49 of 2008. Paragraphs 11 to 15, and 19 to 25 of the supporting affidavits are relevant on this point. I will reproduce them for clarity:

11. *That Civil No. 49/2008 was placed before Honorable Justice Shangwa, who upon hearing quashed the execution order of the Resident Magistrate Court issued on 5th September 2008. The*

said decision was based on the previous invalid proceedings which were nullified by the decision of Honorable Justice Othman as stated hereinabove. A copy of the High Court Ruling is attached marked Annexure "EM7" Collectively.

12. *That I was gravely aggrieved by the said High Court decision and immediately I complained to Judge Kiongozi who upon receipt of my complaint responded as per the attached letter "EM4" dated 11/11/2008.*
13. *Following the advice of Jaji Kiongozi I complained to the Chief Justice who upon receipt of my complaint the respondent as per the attached letter Annexure "EM8" Dated 11/11/20-8.*
14. *When my complaint was placed before the Chief Justice I was advised either to appeal out of time or to apply for Revision in the Court of Appeal against the Ruling of Honorable Justice Shangwa. Copy of the letter dated 28/12/2015 is annexed hereto marked Annexure "EM9"*
15. *That upon receipt of the advice of the Chief Justice I duly prepared and lodged an Application for Revision in the Court of Appeal of Tanzania on 27/01/2016- Civil Application No. 18/2016. However, the said Application was struck out by the Court of Appeal for being lodged out of time as per the attached court Order dated 7/9/2016. A copy of the order is attached marked Annexure "EM10".*
19. *That again was filed Misc. Application NO. 688 of 2016 before the High Court of Tanzania Dar es Salaam District Registry, during the hearing, I raised a preliminary objection and the Court Ruled that the preliminary objection it is rejected. The copy of the said Ruling is hereby attached and marked "EM11" to form part and be read together with this affidavit.*
20. *That during the hearing of the said application, as stated hereinabove, I raise another preliminary objection based on the verification clause and the Court ruled that the respondent should file the amended counter affidavit within (20) days. The copy of the said Ruling is hereby attached and marked "EM12" to form part and be read together with this affidavit.*

21. *That in the same Misc. Application NO. 688 of 2016 again I was raised substantive Misc. Application No. 688 OF 2016, the Court delivered the ruling on 11/10/2019 and dismiss the application.*
22. *That on 7th October 2020, the applicant lodged civil application No. 433/2001 of 2020 To the Court of Appeal praying for exemption from payment of fees, and this honorable court granted the said application, hence the application or extension of time. The copy of the said Ruling and order is hereby attached and marked "EM13" to form part and be read together with this affidavit.*
23. *That the Applicant lodged Civil Application No. 560/2001 of 2020 to the Court of Appeal praying for an extension time within which to file revision and the honorable court granted the said Application. The copy of the said Ruling is hereby attached and marked "EM14" to form part and be read together with this affidavit.*
24. *That the Applicant lodged civil revision No. 556/2001 of 2021 before the Court of Appeal Tanzania, on 1st April 2022 the said application was truck out by the court. The copy of the said Ruling is hereby attached and marked "EM14" to form part and be read together with this affidavit.*
25. *That it is in the best interest of justice that orders prayed or in the chamber summons is the support of which is affidavit is sworn, be granted due to the regularities present in the High Court judge in Civil Revision No. 49 of 2008 during the conduct of this matter.*

The deposed facts in the supporting affidavit above, however, leave unaccounted for six years period between 28th April 2009 the date of the impugned decision 8th September 2015 the date the applicant knocked on the Hon Chief Justice's office for advice as exhibited by annexure EM9 in paragraph 14 of the affidavit; One month period between 28th December

2015 when the applicant received a letter from the Chief Justice's office to 27/01/2016- when he filed Civil Application No. 18/2016; The one-year period between 11th October 2019 after the ruling in application No 688 of 2016 to 7th October 2020 when he filed Civil Application No 433/01 of 2020- and the five months between 1st April 2022 when Civil revision No 556/01 of 2021 was struck out to 7th September 2022 the date this application was lodged in court. It is a settled position that in an application for an extension of time, the applicant must account for every day of delay to convince the Court that he was not negligent or sloppy in pursuing his rights in court. see **Yazid Kassim Mbakileki v. CRDB (1996) LTD Bukoba Branch and Another**, Civil Application No. 412/04 of 2018; **Sebastian Ndaula v. Grace Rwamafa (Legal personal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014, and **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (all unreported) to mention just a few. In this latter case, for instance, the Court held:

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

In the current application, the applicant has failed to account for a period of an aggregate of seven years and six months which in my view cannot just be ignored.

In the event, I find that the application is devoid of merit. It is dismissed in its entirety with no order to charge.

DATED at DAR ES SALAAM this 30th Day of June 2023



E.Y. MKWIZU
JUDGE
30/6/2023