

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 350 OF 2023

(Arising from Civil Case No.19 of 2023)

INDEPENDENT POWER TANZANIA LIMITED 1ST APPLICANT

HARBINDER SINGH SETHI.....2ND APPLICANT

Versus

DIAMOND TRUST BANK TANZANIA LTD RESPONDENT

RULING

26th & 31st July, 2023

BWEGOGGE, J.

The applicants herein above named instituted an application herein in this court under a certificate of urgency praying for an extension of time within which the applicant may file an application for review against the order of this court in Civil Case No. 19 of 2023 delivered on 6th June,2023, among

others. The application is brought under the provision of section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019], section 93,95 and order XLII rule 1(b) of the Civil Procedure Code [Cap. 33 R: E 2019]. This application is supported by the affidavit of one Dora Mallaba, the applicant's attorney counsel.

This application was argued orally whereas the applicants were represented by Ms. Dora Mallaba, learned advocate, and the respondent was represented by Mr. Stephen Axwesso, learned advocate.

In substantiating the application herein, Ms. Dora Mallaba submitted that, on 6/6/2023 the applicants requested to be supplied with a copy of the order and proceedings whereas the same was belatedly supplied on 6/7/2023. A defect was later discovered in the order entered by this court. By then, the time to file a review had lapsed. Thereafter, the applicants had diligently taken steps to initiate the application herein, save the days lapsed which comprise public holiday and weekends.

Admittedly, the counsel subscribed to the operating rule of law that the extension of time is granted upon the applicant furnishing good cause. In

support of her argument, the counsel cited the case of **Michael Lessani Kweka vs John Eliafye** [1997] TLR 152. That, in determining whether an extension of time may be granted, the factors namely, the reason for the delay, length of delay and whether the application was promptly filed are considered by the court. The case of **Tanzania Revenue Authority Tango Transport Co. Ltd and Tango Transport Co. Ltd vs Tanzania Revenue Authority**, Consolidated Civil Application No.4 of 2009 and of 2008, CA (unreported) was cited to bring her point home.

The counsel asserted that the applicant has promptly lodged the application taking into consideration the holidays and weekends in which the application could not be lodged and the length of delay is due to the fact that the applicants were belatedly availed with court documents. Further, the counsel argued that there is an error on the face of the record of this court which is a factor for grant of extension. The counsel cited the case of **Tanzania Fish Processor Ltd vs Eusto K. Ntagalinda** (Civil Application 41 of 2018) [2019] TZCA 67 to buttress her point. In the same vein, the counsel opined that the respondent would not be prejudiced by the grant of this application.

On the other hand, Mr. Axwesso submitted that this court has discretion to grant extension of time. However, certain factors have to be considered for this court to exercise its discretion, namely; **first**, whether the applicants have accounted for each day of delay; **second** whether the applicants furnished sufficient reasons for delay; **third**, whether there is an arguable case; and **lastly**, diligence on part of the applicants. The counsel asserted that the applicants failed to demonstrate those factors.

The counsel asserted that the applicants have failed to demonstrate the factors mentioned above. That in accounting for the delay, the applicants blamed the court for the belated supply of the impugned order on 6/7/2023 whereas the order was ready for collection on 20/6/2023. That it was until 6/7/2023 that the applicants collected the order sought to be reviewed whereas the same failed to account for the time elapsed as required by law. In buttressing the point, the counsel cited the case of **John Dongo and 3 Others vs Lepasi Mbokoso** (Civil Application 14 of 2018) [2019] TZCA 165

Further, the counsel argued that there is no arguable case or error on the face of the record, as asserted by the applicants herein in that the court made the order that the case is withdrawn instead of striking out the same.

That the court granted what was prayed for. The counsel contended that the error should be apparent on the face of the record, not the one to be reasoned for or debated on. The counsel cited the case of **Dr. Muzzamil Musa Kalokola vs Minister of Justice and Constitutional Affairs and Another** (Civil Application 255 of 2019) [2022] TZCA 489 to bolster his point. In conclusion, the counsel opined that the applicants herein having failed to account for the delay, likewise, failed to act diligently. And, the same failed to furnish sufficient cause to justify grant of extension of time.

On rejoinder, Ms. Mallaba reiterated what she submitted in chief and opined that the application herein met the conditions precedent for grant of extension sought.

The point for determination herein is whether the application has substance.

I have into consideration the submissions made by both counsel, herein. I subscribe to the respondent's counsel argument in that the extension of time should be granted for good and, or sufficient cause; though, arguably, what amounts to good cause depends on the circumstances of the particular case. Likewise, I subscribe to the argument of the counsel that the applicant must

show diligence not apathy in taking the intended legal action to warrant grant of extension. In the same vein, it is settled law that each period of delay must be accounted for. See the cases of **Michael Lessani Kweka vs John Eliafye (supra); John Dongo and 3 Others vs Lepasi Mbokoso(supra); Keith Horan & Another vs Zameer Sherahi Rashid & Another** (Civil Application 105 of 2019) [2019] TZCA 437; **Lyamuya Construction Co. Ltd vs Registered Trustees of Young Women Christian Association** (Civil Application 2 Of 2010) [2011] TZCA 4 and **Jubilee Insurance Co. (T) Ltd vs Mohamed Sameer Khan** (Civil Application 439 of 2020) [2022] TZCA 623, among others.

However, my approbation notwithstanding, it is settled law that a point of law of sufficient importance such as illegality and, or error on the face of the record of the decision intended to be challenged constitutes sufficient reason for the extension of time so that the defect complained of may be rectified. In such a case, the applicant is not required to account for the period of delay. See the cases of **Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** [1992] TLR 185; **Tanga Cement Company Limited vs Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001, CA (unreported); and

Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4; and **Hb Worldwide Limited vs Godrej Consumer Products Ltd** (Civil Application 2 of 2021) [2023] TZCA 100, among others.

The applicant's counsel submitted that, having conceded to the preliminary objection raised by the respondent's counsel in that the suit was incompetent for lack of Board resolution to commence civil proceedings, she prayed the suit to be struck out. To the contrary, it is alleged, this court entered an order for withdrawal of the suit. Upon scrutiny, I apprehend that, the substance of depositions made by the counsel for the applicants, coupled with her submission made to buttress the application herein, is that the order entered by this court was erroneous based on the circumstances of the case.

Prima facie, I find relevance in the respective depositions. Now, a pertinent question arises herein; should the applicant's counsel who seeks extension of time to lodge an application for review be pressed to divulge further and better particulars of the alleged illegality as insinuated by the respondent's counsel? I think, the holding in the case of **Mary Rwabizi T/A Amuga Enterprises vs National Microfinance Bank PLC** (Civil Application 378

of 2001 of 2019) [2020] TZCA 355 would provide an apposite answer to this query. The court stated thus:

*" I am of the opinion that an allegation by the applicant that the error in the judgment of the Court has made the decision to be illegal, is a serious matter which deserves the attention of the court on review. I think the question of the existence of real or perceived illegality in judicial proceedings of the final court, like in this case, is not one of the issues to be taken lightly..... **to demand further explanation at this stage, will in my view, be prejudicial to what the Court will have to deal with if an application for extension of time is granted.** It is equally inappropriate at this stage, I think, for me to go further and determine the substance of the claim of illegality."* (Emphasis mine)

Likewise, I would opine that, at this stage, the applicants' counsel need not substantiate the alleged illegality/error on the impugned order. Based on what was deponed by the counsel for the applicants and submission made thereon, it is my settled view that the same should be afforded an opportunity to initiate the intended application for review whereas she will be obliged to illustrate further her allegation of illegality on the impugned order of this court.

Given the foregoing, I find the application herein with substance. The application is hereby granted. The applicant to file the intended application for review within 14 days.

So ordered.

DATED at **DAR ES SALAAM** this 31st day of July, 2023.



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

O. F. Bwego

JUDGE