

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISC. CIVIL APPLICATION NO. 02 OF 2023

(Arising from Misc. Civil Application No. 07 of 2020 in the Juvenile Court of Tabora)

MOHAMED SAID MSANGI APPLICANT

VERSUS

JOHARI PETER MASONGA RESPONDENT

Date of Last Order: 12/07/2023

Date of Delivery: 28/07/2023

RULING

KADILU, J.

Under legal representation of the learned Advocate Mr. Kelvin Kayaga, the applicant has tried to move this court under Section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019], Sections 79 (1) and 95 of the Civil Procedure Code [Cap. 33 R.E. 2019]. He is praying for two orders firstly, an extension of time to file application for revision of proceedings of the Juvenile Court of Tabora in Misc. Civil Application No. 07 of 2020. Secondly, the court to call for and examine the records of the Juvenile Court of Tabora in Misc. Civil Application No. 07 of 2020 in order to satisfy itself as to the propriety, legality and correctness. It is the appellant's contention that the said proceedings are tainted with material irregularities and illegalities touching jurisdiction of the court.

The application has encountered formidable opposition from the respondent's Advocate Mr. Charles Ayo who raised a preliminary objection on point of law to the effect that, the application is untenable for being an

omnibus. He elaborated that an application for extension of time under Section 14 (1) of the Law of Limitation Act and application for revision which is preferred under Section 79 (1) of the CPC are different and they should be made separately. Mr. Ayo added that the grounds of extension of time and the applicable laws are different from those for revision so, the two cannot be combined in one application. According to him, for an omnibus application to be granted, the prayers should be linked and interrelated.

The learned Advocate referred this court to the case of ***Costantino Nzumi v CRDB Bank Ltd & 3 Others***, Revision Application No. 03 of 2021, ***Juliana Armstrong Jerry v International Commercial Bank of Tanzania & 2 Others***, Misc. Land Application No. 30 of 2022, ***Juma M. Nkondo v TOL Gases Ltd/ Tanzania Oxygen Ltd & Another***, Civil Application No. 382/01 of 2019 and the case of ***Ally Salum Said v Iddi Athumani Ndaki***, Civil Application No. 450/17 of 2021. Mr. Ayo added that, in these cases it was stated that two prayers dumped in the same application are bad in law.

He submitted further that in the above cases, the applications were struck out for being incompetent save for the case of ***Ally Salum Said*** where the court determined one prayer and disregarded the other. He thus prayed this court to strike out the application or if the court finds it just, to determine the first prayer and ignore the second.

Mr. Kelvin on his part submitted that omnibus applications are not always bad in law. He explained that there are two schools of thought, one discouraging it and the other advocating for the same for the reasons that there is no statute barring omnibus applications in Tanzania, they speed up disposal of cases, they reduce unnecessary workload to the court as well as aggravating costs to the parties. The learned Advocate made reference to the case of Registered Trustees of ***EAGT v Rev. Dr. John Mahene***, Civil Application No. 518/4 of 2017 and ***China Chongqing International Construction Ltd & 3 Others v Joseph Jasper Machumu & 2 Others***, DC Civil Appeal No.15 of 2021 to support his arguments. He prayed the objection to be overruled and both prayers to be granted. In alternative, Mr. Kelvin implored this court to determine the first prayer and disregard the second.

From rival submissions of the learned Advocates, it is apparent that the point raised by Mr. Ayo is critical because it touches the competence of the application before this court. After a careful scrutiny of the applicants' chamber summons and submissions by the learned Advocates, I now turn to determine the PO. It is Mr. Ayo's contention that the two prayers contained in chamber summons are not interlinked hence, they cannot be dealt with together. Without much ado, I entirely agree with Mr. Ayo that the two prayers were supposed to be determined separately.

I hold this view because the second prayer for revision is dependent on the first prayer for extension of time being granted. Dumping the two prayers in the same application is equal to speculating that the court shall

certainly grant the first prayer. Courts have, in numerous authorities ruled that preferring an omnibus application is tantamount to trying to ride two horses at the same time which is an abuse of the court process. See the case of ***Registered Trustees of Kanisa La Pentekoste Mbeya v Lamson Sikazwe & 4 Others***, Civil Appeal No. 210 of 2020, Court of Appeal of Tanzania at Mbeya. For this reason, preliminary objection raised by Mr. Ayo is hereby upheld.

The next crucial question is, what is the effect of sustaining the objection? As it is not in dispute that where the application is omnibus the court may entertain one prayer and disregard the rest, I invoke the overriding objective principle under Section 3A of the CPC and proceed to determine the first prayer concerning extension of time and ignore the prayer for revision. I opt to deal with the prayer for extension of time because its outcome will pave the way or otherwise for revision application.

Paragraphs 4, 5, 6, 7, 8 and 9 of Mr. Kelvin's affidavit reveal that the Juvenile Court's order was issued on 23/09/2022, but the applicant became aware of it on 16/12/2022 when the time within which he could file revision application had already lapsed. The learned Advocate explained that the order was not appealable and the delay in taking necessary steps was not due to the applicant's negligence. In his affidavit, Mr. Kelvin has raised 4 points of illegality in paragraph 11 which are worth consideration by the High Court. He prayed this court to grant extension of time for filing an application for revision for the ends of justice.

Mr. Ayo took an oath on behalf of his client in which he resisted the application by filing a counter affidavit. He discredited all the grounds of application as stated in the affidavit sworn by Mr. Kelvin. Mr. Ayo prayed the court to dismissed the application for the reasons that it has been filed maliciously to hinder the rights of the respondent.

I have carefully examined the case file and considered submissions by the learned Advocates. I find the task of this court is to decide whether the points raised by the applicant are worth to be considered by this court and granting extension of time. In essence, the High Court cannot grant extension of time if the applicant has not shown good reasons for the delay or that there is an arguable issue. Another factor which is usually considered before extension of time is granted is the degree of prejudice to the respondent if the application is granted. It is undisputed that the High Court has discretion to grant or not to grant extension of time, but the said discretion has to be exercised judicially.

In the case of ***Lyamuya Construction Company Ltd*** (*supra*) the Court of Appeal had this to say:

"As a matter of general principle, it is in the discretion of the court to grant extension of time. But that discretion is judicial and so, it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrary."

In a bid to advance reasonable or sufficient causes that delayed the applicant to file his application in time, it is stated in the affidavit that the impugned order was granted to the respondent without the applicant being afforded opportunity to be heard. It is also on record that the Juvenile Court issued the challenged order without vacating its earlier order of 09/04/2020. Further, one of the grounds of application as adduced by the applicant's Advocate is the existence of illegalities in the order sought to be challenged.

Although the law does not define what a good cause is, case law has established factors to be considered in determining whether good cause has been established, one of them being the illegality of the decision sought to be challenged. In the case of ***Eqbal Ebrahim v Alexander K. Wahiyungi***, Civil Application No. 235/17 of 2020, the Court of Appeal held that the issue of illegality justifies an extension of time so that the point of illegality can be ascertained and if established corrected accordingly. The position was also stated in ***VIP Engineeringa and Marketing limited & 3 Others v Citibank Tanzania limited***, consolidated Civil Reference No. 6,7 and 8 of 2006 where the Court of Appeal held thus:

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes "sufficient reasons" within the meaning of rule 8 of the Rules for extending time."

Being guided by the decisions of the Court of Appeal that the issue of illegality justifies an extension of time even where the Applicant has not

shown a good cause for the delay, the application for extension of time to file application for revision is hereby granted. The Applicant is directed to file application for revision within thirty (30) days from the date of this ruling. Each party shall bear his own costs.

It is so decided.

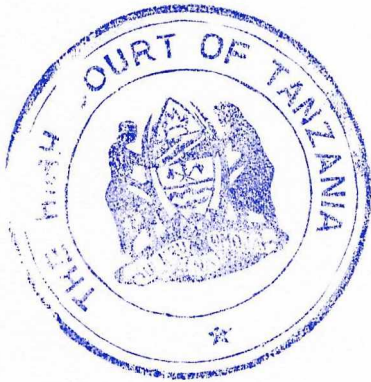



KADILU, M.J.

JUDGE

28/07/2023.

Ruling delivered in chamber on the 28th Day of July, 2023 in presence of Mr. Fadhili Kingu, Advocate holding brief for Mr. Kelvin Kayaga, Advocate for the Applicant.



A handwritten signature in blue ink, appearing to be 'J. MDOE', is written over a circular stamp.

J. MDOE

AG. DEPUTY REGISTRAR

28/07/2023