

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

MISC. CRIMINAL APPLICATION NO. 50 OF 2023

(Arose from Criminal Appeal No. 57 of 2016 - Before Hon. A. Mwankenjela, RM; in the District Court of Morogoro, at Morogoro; Originating from Chamwino Primary Court, at Morogoro in Criminal Case No. 382 of 2016)

AMINA SHOMARI APPLICANT

VERSUS

THOMAS SALEKI RESPONDENT

RULING

30th August & 26th Sept, 2023

CHABA, J.

Through the legal aid services of Mr. Justine Kaleb, the learned advocate from Morian Law Chambers based in Dar Es Salaam, the Applicant Amina Shomari, under the certificate of urgency lodged on 18th August, 2023, preferred the instant application by way of chamber summons made under section 14 (1) of the Law of Limitation Act, [CAP. 89 R. E, 2019] ("the LLA"), seeking for both exparte and interparties orders as hereunder:

EXPARTE:

- (a) This Honourable Court be pleased to dispense with the requirement of serving notice to the respondent and proceed with the hearing hereof pending the hearing interparties.
- (b) That, this Honourable Court be pleased to order Maintenance of Status Quo Ante, specifically for purposes of providing security from Plot No. 3, Block "A" situated at Kihonda Magorofani, pending determination of the interparties application for leave to file an appeal out of time.

INTERPARTIES:

- (a) That, this Honourable Court be pleased to grant an applicant herein leave to file an appeal out of time, against the decision of Morogoro District Court in Criminal Appeal No. 57 of 2016 - Before Hon. Mwankenjela, RM dated 23/09/2016.
- (b) Costs of this application be borne by the respondent.
- (c) Any other order the court shall deem proper to grant in the circumstances.

The application is supported by an affidavit deposed by the applicant, Ms. Amina Shomari and vehemently contested by the respondent through a counter affidavit lodged in this Court on 4th September, 2023.

The brief background of this matter gleaned from the affidavit filed by the applicant and according to the record goes thus: The genesis of this application can be traced from the decision of the Primary Court of Chamwino in Criminal Case No. 382 of 2016 wherein the applicant stood as the accused person and the

respondent appeared as the complainant. At first, the applicant / the accused and the respondent / complainant had the relationship of landlady and tenant. During the trial, both parties had their own version of testimonies in respect of their tenancy relationship which turned sour, and as a result the applicant (landlady) was arraigned before the Primary Court of Chamwino charged with two criminal offences of house breaking and stealing. At the trial, the respondent asserted that, on 14th May, 2016 he approached the applicant seeking for a room to rent for a short period due to the nature of his work. It is on record that, both agreed that the respondent had to pay the applicant TZS. 20,000/= as a rent for a month. Afterwards, the respondent travelled to Dar Es Salaam Region for official matters. While in Dar Es Salaam he received some information to the effect that, the landlady drove him out from her house (room) for a reason that he failed to pay his rent for six months. The two disputants tried to discuss the controversy between them, but the same ended in vain. On 12th June, 2016 he came back to Morogoro but again their conversions was unfruitful. Later on, he was ordered to vacate the room on 16th June, 2016.

It would appear that, the respondent delayed to remove his properties from the said room and therefore the applicant had no other option other than to remove his properties and placed it just around the door attached to the room that he rented. The applicant removed those properties in front of the street chairperson. According to him, at the material time, the applicant was insisting

that he, the respondent had to pay the rent for one month, i.e., TZS. 20,000/=.

On 17th July, 2016 the applicant broke into the said room and removed the respondent's properties. When the respondent came back to his room and made thoroughly inspection, he realized that his laptop valued TZS. 1,200,000/= and cash money amounting to TZS. 250,000/= were missing. His testimony got support from SM.1 one Eliazeus Rwegasira.

On her part, the applicant did not deny the fact that the two had a tenancy relationship. She told the trial Court that, at first, they agreed on 14th May, 2016 that the respondent had to hire a room and pay rent for six months (TZS. 120,000/=) but he only paid TZS. 20,000/=. He however promised that, at the end of the month he could pay the remaining balance. Her evidence revealed further that, the respondent did not honour his promise. So, she reported the matter to the street chairperson and the respondent said he was ready to pay only TZS. 20,000/=. Being the land lady, she refused to receive that amount because it was contrary to what they agreed upon. Unexpectedly, the respondent spanked the applicant. It would appear that the applicant was unhappy with acts of the respondent and decided to report the matter at the nearest police station. When she reached at the police station, she found that the respondent already arrived and gone ahead of her as a result she was arrested. Later on, she went to the hospital for medical examination. She said, though she reported at the police

station that she was assaulted (slapped) by the respondent, no legal action was taken till to-date. Her testimony was supported by SU2, one Rehema John.

It is from the above background, the applicant was arraigned before the Primary Court of Chamwino charged with an offence of breaking into the respondent's bedroom and stealing the laptop valued at TZS. 1,200,000/= and cash money TZS. 250,000/=, making a total of TZS. 1,450,000/=.

At the height of the trial, the applicant / accused was found guilty for both counts, convicted and sentenced to serve conditional discharge for terms of twelve (12) and six (6) months respectively. The trial Court ordered the sentences to run concurrently. The trial Court further gave an order to the effect that, the applicant / accused had to pay a laptop valued at TZS. 1,200,000/= and the sum of TZS. 250,000/= making a total of TZS. 1,450,000/= as compensation to the respondent.

Aggrieved, the applicant unsuccessfully appealed to the District Court of Morogoro, at Morogoro which blessed the decision of the trial Court. Afterwards, through the decision of the Primary Court of Chamwino, at Morogoro in Civil Case No. 62 of 2017, a Court Broker namely, Property International Limited was appointed and executed the attachment and sale of a house located at Plot No. 3, Block A, situated at Kihonda Magorofani, within Morogoro Municipality. After 7 years of being stranded, frustrated, homeless, and cashless, the applicant has

approached this Court through this application which in her view, will assist her in accessing and obtaining substantive justice.

At the hearing of the application, the applicant had the representation of Mr. Justine Kaleb, the learned advocate who also drew and filed the applicant's written submission, whereas the respondent who prepared and filed his own reply to the applicant's submission appeared in person, and unrepresented.

Submitting in support of the application, Mr. Justine Kaleb reiterated what the applicant deposed in her affidavit and asserted that, there are a number of reasons for which forced the applicant to move this Court to extend time within which she can be able to file an appeal against the decision of the lower Courts based upon the following grounds:

- (i) **One**, that the respondent was taking advantage of the applicant, an illiterate woman and a lay person who was ignorant of legal matters and robbed her of her rights which caused a lot of delay for filing the appeal.
- (ii) **Secondly**, that the applicant was economically incapacitated after being left to be homeless from the house which she used to obtain income of at least TZS. 150,000/= for rents, but after her house being sold, she could not even afford to rent a one-bedroom house hence denying the applicant the ability to make follow ups of whatever steps which she was supposed to take hence such a delay.

- (iii) **Thirdly**, that there have been a number of applications, cases and appeals from the respondent which made the applicant to be the attendant of different Courts starting from Primary Courts, District Courts, High Courts and other judicial bodies in order to make sure that the applicant remains without a clear dimension of what to deal with and what not to deal with. Giving an example, Mr. Justine Kaleb mentioned some cases which in one way or another prevented and frustrated the applicant from accessing her rights including: Civil Case No. 62 of 2017 filed and concluded at Chamwino Primary Court, Civil Case No. 66 of 2018 filed before the District Court of Morogoro, Civil Appeal No. 173 of 2019 lodged at the High Court of Tanzania, Dar Es Salaam District Registry, Land Application No. 109 of 2018 filed before the District Land and Housing Tribunal for Morogoro, at Morogoro, Land Appeal No. 4 of 2020 and Extended Land Appeal No. 19 of 2020 - Kivukoni Resident Magistrate's Court, Misc. Application No. 9 of 2023 - the District Court Morogoro, at Morogoro and many other cases from the respondent whose main purpose was to frustrate the applicant and render her powerless in pursuing her justice.
- (iv) **Fourthly**, that the intended appeal has very great, promising and overwhelming chances of succeeding because of the grounds which are to be adduced before this Court and move the Court into overruling the erroneous decision of the trial Courts which have made the applicant to suffer damages for the past seven (7) years.

- (v) **fifthly**, that the whole process of proceedings was done in the property which do not belong to the applicant because she was merely the administratrix of the late Mahamudu Salumu Muhomanembo implying that all the decisions to attach, sell, demolish and many other actions done were done without legal justifiable reasons.

Placing reliance on section 21 (1) of the Law of Limitation Act, [CAP. 89 R. E. 2019]; section 25 (1) (b) of the Magistrate's Courts Act [CAP. 11 R. E. 2019]; Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977, (as amended from time to time); the holding in the cases of **Tanzania Fertilizer Company Limited Vs. National Insurance Corporation of Tanzania Limited and Another**, [2016] TLS LR 55; and that of **Ramadhani Nyoni Vs. M/s Haule & Company Advocates** [1996] TLR 71, the Counsel for the applicant implored this Court to allow the application in its entirety and grant leave to the applicant to file an appeal out of time taking into consideration that, the said appeal has great chances of succeeding as far as the trends of injustices towards the applicant are concerned.

In reply, the respondent right away commenced his submission by citing the case of **Ngao Godwin Losero Vs. Julius Mwarabu (Civil Application 10 of 2015) [2016] TZCA 302 (13 October 2016)** and rejected the claim and explanation of ignorance of the legal procedure given by the applicant as the basis to account for the delay.

As regards to the issue of economic constraint as a reason for delay, the respondent contended that, being economically incapacitated was insufficient reason as there are a number of legal aids which the applicant could have approached to help her in the case. The respondent referred the Court to the case of **Yusufu Same & Another Vs. Hadija Yusufu**, Civil Appeal No. 1002 (unreported), where the CAT observed that:

"We are aware that financial constraint is not sufficient ground for extension of time. See: Zabitis Kawuka v. Abdul Karim (EACA) Civil Appeal No. 18 of 1937. But in the circumstances of this case at hand, where the respondent was a widow, depending on legal aid, her plea of financial constraint cannot be held to be insignificant."

The respondent submitted further that, there is no sufficient reason which amount to an extension of time by the applicant since an extension of time is the discretion of the Court exercised after the applicant has advanced sufficient cause or good reason for the delay. He underlined that, there are factors that can be considered as sufficient reasons for granting extension of time based on case laws. These factors include the following:

- (i) Whether or not the application has been brought promptly.
- (ii) Existence of valid explanation for the delay.
- (iii) The applicant must account for all the period of delay.

- (iv) The delay should not be inordinate,
- (v) The applicant should show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- (vi) If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

The respondent also referred the decisions of this Court in the case of **Amanda Lipawaga Vs. Dora Mwakayai**, Misc. Land Application No. 5 of 2023 and Court of Appeal of Tanzania in **Kyalamali Mathayo Vs. R**, Criminal Appeal No. 15 of 2013 (Both unreported), where both Courts discussed the issue of good cause when the Court is exercising her discretion under section 14 (1) of the LLA and urged the Court to dismiss the application with cost on the ground of lacking sufficient grounds to warrant this Court grant orders sought by the applicant for enlargement of time.

I have objectively considered and weighed the rival arguments from both parties along with the affidavit deposed by the applicant. The sole question for my determination is whether or not the applicant has disclosed sufficient cause for delay to warrant this Court exercise its discretionary power under section 14 (1) of the LLA.

To begin with, I feel it is useful and informative to restate that, as correctly submitted by both parties, this Court has discretionary power to extend time upon

good cause shown by the applicant. **See: Yazid Kassim Mbakileki Vs. CRDB (1996) LTD Bukoba Branch & Another**, Civil Application 412/04 of 2018; **Tanga Cement Co. Ltd Vs. Jumanne Masangwa & Another**, Civil Application No. 06 of 2001, and **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (CAT) (unreported), just to mention a few.

Deducing from the documents filed and the submission made by the Counsel for the applicant, Mr. Justine Kaleb, the applicant's thirst in this application is to be granted with the leave to appeal against the decision of the District Court of Morogoro, at Morogoro so as to cure the illegality complained of, which is unlawful attachment and sale of her house in Plot No. 3, Block A, situated at Kihonda Magorofani, Morogoro Municipality which stemmed from tenancy relationship, passed to a criminal case against that landlady and finally reached to unlawful attachment and sale the house of the applicant for just small claims of money, that is TZS. 1,450,000/=.

At the outset, I wish to put it clear that, on scrutiny of the affidavit deposed by the applicant which supports this application, the grounds worthy of determination by this Court are found on paragraphs 7, 11, 12, 13, 14 and 16. On ground 16, the Counsel for the applicant averred that, the intended appeal has a great chance of succeeding as far as the trends of injustices against the applicant are concerned. It is now a settled law that, the grounds upon which the relief for

extension of time is sought must be stated in the supporting affidavit. This has been a standpoint of law in numerous Courts decisions. For instance, upon being faced with akin situation in **Farida F. Mbarak & Another Vs. Domina Kagaruki & Others (Civil Reference 14 of 2019) [2021] TZCA 600 (20 October 2021)** (Extracted from www.Tanzlii.org), the CAT had the following to state:

"Further, we find that the explanations of the delay given by the applicants in their written submission before the single Justice and also the explanations by Messrs. Mbwambo and Nyika in their respective submissions before us that the 5 days were spent in preparing and filing the application, to be statements from the bar which cannot be acted upon. As correctly held by the single Justice, the explanations needed to be given in the notice of motion or the supporting affidavit".

As such, in my observation, what is contained in the applicant's affidavit in particular paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10 and 15 are merely the historical background of the matter at hand elaborating the fracas between parties, or what actually transpired from the date of tenancy relationship to-date, save for paragraphs 7, 11, 12, 13, 14, and 16. However, on close scrutiny of paragraph 16 which is grounded on a great chance of success, I found it as merely statement from the bar having no evidential value and the same cannot be determined at

this juncture. I say so because, this Court and the CAT on numerous occasions has taken the view that, great chances of success of an intended appeal though a relevant factor in certain situations, it can only meaningfully be assessed later on appeal after hearing arguments from both sides. **See: Tanzania Posts & Telecommunications Corporation Vs. M/s H. S. Henritta Supplies (1997) TLR 141** at page 144 and **Dominic Ishengoma Vs. Geita Gold Mining Ltd**, Civil Application 146 of 2020 (Both unreported).

Based on the above precedents which I fully subscribe to, it is my holding that, the question whether the intended appeal has great chances of success or not, cannot be determined at this stage as it may pre-empt the merits of the intended appeal.

Besides, the respondent in his submission highlighted that there are crucial factors to be considered by the Court as sufficient reasons for extending time to lodge the intended appeal as stated earlier on at pages 9 & 10 of this ruling. The last point i.e., (vi) says: -

"if the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged, the Court may grant the orders sought by the applicant for extension of time".

At paragraph 7 of the affidavit, the applicant deposed that, even the blind can see that the applicant's case and complaints for being beaten by the respondent were turned upside down and she was then charged of theft while she was the one who was beaten, assaulted and abused by the respondent, but unfortunately, she suffered the consequences of her generosity of having the scrupulous, in-disciplined and inhuman tenant who turned her into the project. At paragraphs 11, 12, 13 and 14 the applicant averred that the respondent and his colleagues finalized their malicious intention when they attached and sold by auction the house in Plot No. 3, Block A, situated at Kihonda Magorofani within Morogoro Municipality. Although the house was attached and sold to Edome Eliasi Mwakitengo by a Court Broker operating in the names of Property International Limited, the relevant procedural law was not adhered to. Further to that, at that moment, the applicant was not a lawful owner of the said house but merely an administratrix of the estates of her late husband, Mahamudu Salum Muhamanembo who died intestate on 7th June, 1997.

In that view, the Court Broker who conducted the auction and probably the trial Court that involved to appoint the Court Broker did not conduct due diligence to find out whether the said house did belong to applicant or otherwise. As a result, the whole exercise of auctioning the house was, in my unfeigned opinion, tainted with illegality (grave errors as suggested by the applicant's Counsel), hence I find this application meritorious.

Further, it was stated by the applicant that, the financial constraint was one among the reasons for delay. This fact was well elaborated by the Counsel for the applicant in his submission. On his part, the respondent vehemently opposed the argument. On my part however, I subscribe to the decision of the CAT in **Yusufu Same & Another Vs. Hadija Yusufu** (supra) cited by the respondent. Although financial constraint is not sufficient ground for extension of time, but looking at the surrounding circumstances of the instant application, and the fact that the applicant is stated to be a widow depending on legal aid as hinted above, at any rate, her plea of financial or economic constraint cannot be held to be trivial.

Similarly, in the case of **Costantino Victor John Vs. Muhimbili National Hospital, (Civil Application 214 of 2020) [2021] TZCA 77 (17 March 2021)**, the CAT applied the same principle and held:

"As observed in Yusufu Same (supra) in the excerpt reproduced above, financial constraints may not be a sufficient ground for extension of time. However, as observed in the same excerpt, there are exceptional circumstances when it can be sufficient. In that case, the person seeking extension of time was a widow on legal aid. It was observed that, in such circumstances, her plea of financial constraints could not be held to be insignificant. I have the same sentiments here. In the case at hand, the

applicant, was equally on legal aid. On the authority of Yusufu Same (supra), his plea of financial constraints cannot be taken to be insignificant. I take it as sufficiently demonstrated that the applicant's delay is exceptionally excusable."

From the foregoing, and to the extent of my finding I have endeavoured to demonstrate herein above, there is no dispute that the applicant is a widow, an old woman, aged sixty-eight (68) years old and who is striving and fighting to access what she believes to be her rights and justice through the legal aid services determined to challenge the decisions of the lower Courts. Further, it is also on records that, in a bid to pursue for her rights, on different occasions the applicant did manage to obtain some assistance from here and there, but the same wasn't be able to dig into the root of the problem and come up with the proper route that could assist her access the respective justice.

In the result, and taking into consideration the surrounding circumstances pertaining in the instant application, it is my finding that the applicant has managed to advance good cause to warrant this Court exercise its discretionary power to grant the orders sought for extension of time. Hence, this application has merits and it is hereby allowed but subject to the Law of Limitation Act [CAP. 89 R. E. 2023]. Each party shall bear its own costs. **It is so ordered.**

DATED at MOROGORO this 26th day of September, 2023.



M. J. Chaba

JUDGE

26/09/2023

Court:

Ruling delivered under my hand and Seal of the Court in Chambers this 26th September, 2023, in the presence of the Applicant who appeared in person, and unrepresented and in absence of the Respondent.



M. J. Chaba

JUDGE

26/09/2023

Court:

Right of Appeal to the parties fully explained.



M. J. Chaba

JUDGE

26/09/2023

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