

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

MISC. CIVIL APPLICATION NO. 42 OF 2023

(C/F Misc. Cause No. 56 of 2022 High Court of Tanzania at Arusha)

LAWRENCE SURUMBU TARA APPLICANT

VERSUS

DR. GOOLUCK BEDA NDAWEKA 1ST RESPONDENT

REGISTRAR OF THE VETERINARY COUNCIL

OF TANZANIA 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

18th August, & 22nd September, 2023

TIGANGA, J.

The applicant is seeking for extension of time so that he can file an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court (B.K. Phillip, J.) in Misc. Cause No. 56 of 2022.

The application through a chamber summons is made under section 14 (1) of the **Law of Limitation Act**, Cap 89, R.E 2019, and is supported by the applicant's sworn affidavit in which he deponed that, after the impugned decision was delivered on 23rd March 2023, the applicant was not

satisfied, hence he decided to appeal to the Court of Appeal of Tanzania. He thus filed a Notice of Appeal on time and on 19th April 2022, he applied for Leave to Appeal to the Court of Appeal of Tanzania electronically and thereafter, made an appearance before this Court on the following two days consecutively so that he could physically file the said application. However, he was informed that his application had not been successfully admitted electronically. He thus repeated the process but was already late hence the current application. He also attached the affidavit of his Advocate Tadey Lister deponing on this fact.

His affidavit was opposed by the respondents who filed counter affidavit thereof through Dr. Amani Kilemle who disputed the application and deposed that, the applicant was fully aware of the procedure. Thus, the delay was out of negligence and, there is no good reason for the delay to be entitled extension of time.

During the hearing of the application which was by way of a written submission, the applicant appeared in person, unrepresented whereas the respondents were jointly represented by Ms. Christabella Mandembwe, learned State Attorney.

Supporting the application, the applicant submitted that, his intended appeal is to challenge the ruling of this Court, Philip, J. which struck out his application for leave to apply for Judicial Review on the ground of non-joinder and mis-joinder of a party. After the impugned ruling was delivered on 23rd March 2023, his Advocate Mr. Tadey Lister electronically applied for leave to appeal to the Court of Appeal of Tanzania on 10th April, 2023. However, the Judicial Statistical Data System was not working properly hence the said application was not successfully filed, but he came to realize the same on the following day when he made an appearance in the court promising with intention of being supplied with a control number to pay for the Court fees on such application. Further to that, the JSDS remained problematic until 28th April, 2023 by then the applicant had changed Advocate to Mr. Filimon Lameck Maige who prepared the documents for this application and electronically filled it on 3rd May of 2023.

The applicant further submitted that this Court has the discretionary power to allow the application for extension of time based on the circumstances of each case. That, his delay was due to defects of the JSDS system, hence not out of negligence. He referred the Court to the case of **Bruno Wenseslaus Nyalifa vs. The Permanent Secretary and**

Ministry of Home Affairs [2018] TLR 58 which set the principles to be considered in extension of time as; the applicant should account for the delay, such delay must be ordinary, the applicant must show diligence, and not apathy, negligence or sloppiness and when there is an illegality on the decision sought to be challenged.

The applicant went on to submit that, apart from the JSDS problem, the impugned decision if faced with illegality because, according to Order 1 Rule 9 of the **Civil Procedure Code**, CAP 33 R.E. 2019 (CPC), the issue of non-joinder or mis-joinder of parties cannot defeat the application but the trial Judge used it as a ground to strike the application. To cement this argument, he cited the case of **NUTA Press Ltd vs. MAC Holdings and Another**, Civil Appeal No. 80 of 2016 where the Court of Appeal at Dar es Salaam ruled out that, when there is a necessary party not joined to the case and none of the parties is willing to do so, the court may order such party to be joined. He therefore argued that the trial court Judge was not justified to strike out the application but rather order the party she sought to be necessary added. That, this illegality suffices to be a ground to be extended time as held in the cases **Mohamed Salum Nahdi vs. Elizath Jeremiah**, Civil Reference No. 14 of 2017, CAT at Dsm and **Principal Secretary**,

Ministry of Defence and National Service vs. D.P. Valambhia [1992]

TLR 185, 387. He prayed that this application be granted for the reasons adduced herein above.

Opposing the application Ms. Madembwe submitted that, an application for extension of time can only be granted after the court is satisfied that there is sufficient cause established by the applicant. She cited the cases of **Yusuph Same & Another vs. Hadija Yusuph**, Civil Appeal No. 1 of 2002, and **Zitto Zuberi Kabwe & 2 Others vs. AG**, Civil Application No. 365/01/2019 both by the Court of Appeal which underscored on use of judicial discretion in granting an extension of time be considering reason for the delay, reasonable diligence and illegality on the impugned decision (if any).

She argued that the reason adduced by the applicant in respect of the multifunction of JSDS was hearsay from his Advocate, however, without his affidavit swearing on the same, the claims remain hearsay as held in a number of cases by the Court of Appeal. To mention a few, she cited the cases of **Sabena Technics Dar Limited vs. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020, and **NBC Ltd vs. SUPERDOLL Trailer**

Manufacturing Company Ltd, Civil Application No. 13 of 2002. She argued that the failure of the applicant to attach the affidavit of the Deputy Registrar telling him about JSDS defaults, his claims remain unfounded, hence not a sufficient cause to be granted an extension of time.

She further submitted that, for illegality to be considered, the Court of Appeal in the case of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference No. 13 of 2019 ruled out that such illegality should be on the want of jurisdiction, denial right to be heard or that the matter was time-barred. Thus, the applicant has failed to prove any of the three ingredients mentioned. She prayed that this application be dismissed with cost.

In his brief rejoinder, the applicant maintained that, he has managed to establish a reasonable cause for the delay and that the impugned decision is illegal. There is an affidavit of Advocate Tadey Lister attached to his affidavit in which he deponed on the history of the event. Further, according to section 69 of the **Advocates Act**, CAP 341, an Advocate is an officer of the Court hence, in the absence of the Deputy Registrar's affidavit, his affidavit is enough evidence. Regarding illegality, the applicant defined it

from the **Black's Law Dictionary** 9th Edition, 2009 and **P. Ramanatha Aiyar Concise Law Dictionary**, 3rd Edition, 2005 to mean an act or state or condition of being an unlawful, violation of the law which complete defects in the Proceedings. He insisted that, according to Order I rule 9 of the CPC, the trial judge was not justified to struck out the application.

After summarizing the rival arguments from both parties the question for determination is whether this application for extension of time has merit. It is a trite principle that grant of extension of time is entirely upon the court's discretion, which however should be exercised judiciously. Moreover, the grant is not automatic, a party has to convince the court that he/she has genuine grounds and sufficient reasons for the court to exercise its discretion and grant an extension as it was held in the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No 12 of 2012, CAT. There is no definition of what a good cause must entail in extending time, it can however be due to a number of factors such as the duration of whether the delay was inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the

illegality of the decision sought to be challenged. (See; **Attorney General vs. Tanzania Ports Authority & Another**, Civil Application No 87 of 2016 CAT and **Ramadhan J. Kihwani vs TAZARA**, Civil Application No. 401/18 of 2018, CAT (unreported).

In the application at hand, the applicants claimed that the delay was caused by a technical error in the JSDS system which made him fail to electronically file his application for leave to appeal to the Court of Appeal timely. Counting from when the impugned decision was delivered i.e. 23rd March 2023 to 19th April 2023 when he claimed to have unsuccessfully filed his application was 26 days, he was on time, according to him from that day on to 28th April 2023 the JSDS system still had defects, a fact which was corroborated by Mr. Tadey Lister's affidavit. From thereon, he filed this application on 3rd May, 2023 which was 5 days after the attempt to file leave to appeal failed.

Owing to the current procedure of filing suits, applications, submissions, and the like electronically in our Courts, the law has been amended to cater for the same vide **Rules 2 and 3 of the Civil Procedure Code, (Amendment of the First Schedule) Rules**, 2019, GN. No. 381 of

2019 and **Judicature and Application of Laws (Electronic Filing)**

Rules, 2018. In rule 23 (1) of the latter law, it is provided that;

"23.-(1) where a document is filed with, served on, delivered or otherwise conveyed to the court by electronic transmission, the time for service of that document shall begin to run from the time the Registrar's or the magistrate in-charges notification of his acceptance of the document is received in the computer system of that registered user."

According to these rules on electronic case management systems and as practice goes, once the matter is filed in the Court electronically, the time of service begins to run once the Magistrate in charge or Registrar/Deputy Registrar endorses the filed hard copies to show acceptance. I have to admit, however, that at times, this procedure does not go as smoothly as anticipated as the system sometimes multifunctions.

In my considered view, the applicant has managed to establish sufficient cause for the delay, also the narration does not show if he was negligent or failed to act on promptness. The 5-day delay to file the current application can be pardoned considering the fact that, he changed an Advocate and two days of those were weekends.

As far as illegality is concerned, the law is clear and a number of Court of Appeal decisions approve illegality of the decision to be challenged suffices as a good cause for extension of time to be granted. See; **Secretary, Ministry of Defence and National Service vs. Devram Valambhia** (supra) and **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha (unreported). In the latter case, the Court of Appeal observed that, illegality must be apparent on the face of the record such as the question of jurisdiction, and not one that would be discovered by a long-drawn legal argument or process.

In the application at hand however, the issue of non-joinder or misjoinder of party is the main contentious issue to be determined in the intended appeal by the Court of Appeal. In the circumstance, deciding whether or not my fellow judge was justified to strike the application instead of just ordering the necessary party to be joined is subject to determination by the Court of Appeal a jurisdiction which I am not clothed with.

In light of the above, I find this application meritorious and proceed to grant the applicant 14 days to file his application for leave to appeal to the Court of Appeal. Costs to follow the event.

It is so ordered.

DATED and delivered at **ARUSHA** this 22nd day of September 2023.

