

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 279 OF 2023**

(From Civil Case No. 52 of 2018 of the District Court of Ilala at Kinyerezi dated  
06/05/2020 before Hon. C. Mrema, RM)

**AHADI ELIFAS MSANGI.....APPLICANT**

**VERSUS**

**ALI KHAKI.....1<sup>ST</sup> RESPONDENT**

**MAJESTIC DEVELOPERS LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

Date of Last Order: 12/09/2023.

Date of Ruling: 22/09/2023.

**E.E. KAKOLAKI, J.**

The applicant herein is moving this Court to extend him time within which to appeal to this Court against the Judgment and Decree of the District Court of Ilala at Kinyerezi in Civil Case No. 52 of 2018 handed down on 06/05/2020 and any other relief which the Court may deem fit to grant. The application is preferred by way of chamber summons under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019] (the LLA) and sections 3A(1) and (2), 3B(1) and (2) and 95 of the Civil Procedure Act, [Cap. 33 R.E 2019] (the CPC),

supported with an affidavit duly sworn by **Emmanuel William Kessy**, applicant's advocate, stating the grounds as to why this application should be granted. The grounds are two, **One**, technical delay as the applicant filed his appeal in time but was struck out for want of proper name of the second respondent, hence delayed in rectifying the error and **second**, there are overwhelming chances of success of the appeal if the application is granted. Merit of the said application was strenuously resisted by the respondent when filed her counter affidavit to that effect, inviting this Court to dismiss it. It was respondents' response that, the applicant has failed to account for the delayed days as there was no proof that the judgment was corrected from the trial court on 29/05/2023 before this application was preferred as the purported corrected judgment annexure HAD 4 does not support such contention.

When the matter was called on for hearing, both parties appeared represented and were heard viva voce as the applicant hired the services of Mr. Anendumi Semu while the 1<sup>st</sup> and 2<sup>nd</sup> respondents were represented by Mr. Gratian Mali, both learned counsel.

Briefly the applicant herein lost his case against the respondents before the District Court of Ilala at Kinyerezi in Civil Case No. 52 of 2018, in its judgment handed down on 06/05/2020, the result of which filed in time an appeal to this Court vide Civil appeal No. 238 of 2020, assailing the said decision. It appears lucky was not on his side as the said appeal was struck out for being preferred against the wrong party **Majestic Developers Limited** instead of **Majestic Development Limited**, before he was returned to the trial court for rectification of the decree and granted with leave to file the appeal within 30 days from the date of issuance of a corrected decree by the trial court as demonstrated in the drawn order by this Court annexure HAD-2.

It is averred by the applicant in paragraphs 4 and 5 of the affidavit that, before the trial court the said decree was corrected and its copies issued to the parties on 12/04/2023 but later on noted that, the judgment has similar error and moved the court for its correction too, in which the corrected judgment was issued to him 29/05/2023, before this application was preferred on 08/06/2023 after noting that the 30 days period extended to him had lapsed. With the above background of the matter at hand, the issue for determination before this Court is whether the application is meritorious.

It is settled law that, an application of this nature brought under section 14(1) of LLA, the applicant has to demonstrate good cause enjoining this Court exercise its discretionary power judiciously to either grant the application or not. As to what amounts to good cause there is no fast and hard rule as that depends on the grounds advanced before the court to justify the delay. The grounds included a number of factors to be considered such as *whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant*. See the cases of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 and **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (CAT-unreported). In justifying the delayed period the law provides further that, the applicant has to account for each and every day of delay. See the cases of **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 and **Sebastian Ndaula Vs. Grace Rwamafa**, Civil Application No 4 of 2014 (both CAT-unreported). Illegality of the decision suffices to constitute ground of extension of time even when delayed period is not accounted for, in as long as the said illegality is visible on face of record. See the cases of

**Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (both CAT-unreported).

With the above principles in mind, I now proceed on to consider the submission by the parties on the merit and demerits of this application. In his submission in support of the first ground Mr. Semu informed the Court that, the appeal in Civil Appeal No. 238 of 2020 by the applicant filed in time was struck out by this Court for being preferred against the wrong party, before leave was granted for him to refile the appeal with 30 days from the date of issuance of a corrected decree by the trial court where he was referred to for rectification of the decree. That, the said decree was reading **Majestic Developers Limited** as the 2<sup>nd</sup> respondent instead of **Majestic Development Limited**, in which the rectification of decree was conducted on 12/04/2023 and the copies issued to parties on the same date. Mr. Semu went on to submit that, on receiving the said decree it was noted that even the judgment had similar defect, so the trial court was moved to rectify it as well since the rectified judgment was issued to the applicant on 29/05/2023, before this application was preferred on 08/06/2023. In his view, the delay

was not caused by applicant's negligence rather by technicalities resulting from the defect of both judgment and decree that rendered the first appeal defective hence an order for their rectification. The learned counsel relied on the cases of **Lyamuya Construction** (supra) as cited in the case of **Waziri Juma Msigiri Vs. Kisage Ginche Marwa**, Misc. Land Application No. 628 of 2022 (HC-reported), to impress upon the court that, the applicant had demonstrated sufficient cause to warrant this court grant the applications after fulfilling the following, **one**, to account for delayed days, **two**, exhibit that the delay if any is not inordinate, **three**, that the applicant has exercised diligence and not apathy, negligence or sloppiness in prosecution of an action he intends to take and **fourth**, existence of point of law of sufficient importance; such as illegality of the decision sought to be challenged.

In another ground Mr. Semu contended that, the appeal has overwhelming chances of success as deposed in paragraph 6 of the affidavit hence this application be granted to avail the applicant with an opportunity to prosecute his appeal.

On the respondents' side Mr. Mali having adopted the contents of respondents counter affidavit with force of argument submitted that, this application is wanting in merit as the applicant failed to account for each and

every day of delay, from the time when the corrected decree was issued on 12/04/2023 up to 08/05/2023 when this application was filed, as there is no evidence to exhibit the date in which the said judgment was rectified and collected from the trial Court, apart from 29/05/2023 as claimed by the applicant. As to the claim that, the appeal has overwhelming chances of success, Mr. Mali countered that, it is not sufficient to so allege as the applicant ought to have gone further to demonstrate to the Court that, there is arguable case worth of consideration by the appellate court as it was stated in the case of **Ally Mohamed Mkupa Vs. R**, Criminal Application 93/07 of 2019 (CAT-unreported), which duty he failed to discharge. He thus prayed the Court to find the application is without merit and proceed to dismiss the same. In a brief rejoinder Mr. Semu reiterated his submission in chief while adding that, the period of ten (10) days between 29/05/2023 when the copy of rectified judgement was corrected to 08/06/2023 when this application was filed is not inordinate, thus all the delayed days have been accounted for. He thus stressed that, the applicant has demonstrated sufficient cause warranting this court grant the application and prayed the Court to grant the same.

I took time to peruse the affidavits, counter affidavit of respondents and accorded the deserving weight both parties' fighting submission with view of responding to the issue raised above as to whether the application is meritorious or not. From the submission both parties are at one that, the trial court judgment and decree had defects for referring the name of 2<sup>nd</sup> respondent as **Majestic Developers Limited** instead of **Majestic Development Limited**, in which its decree was rectified on 12/04/2023 as ordered by this Court in its decision in Civil Appeal No. 238 of 2020 and copies issued to parties on the same date. They only part their ways as to when the alleged similar error to the judgment was corrected by the trial court and rectified copy issued to the applicant before this application was preferred.

As the decree was issued on 12/04/2023, the date in which time for filing the appeal within 30 days as extended by this Court in Civil Appeal No. 238 of 2020 started to reckon, the applicant ought to have accounted for the period of 27 days from 13/05/2023 to 08/06/2023, when this application was filed. It is claimed under paragraph 5 of the affidavit that, the corrected judgment was availed to the applicant on 29/05/2023, the contention which is vehemently contested by Mr. Mali that there is no single document to



exhibit to the court as to whether the applicant requested for the said judgment and supplied with the same on 29/05/2023 as alleged, hence the days not accounted for. It is true and I agree with Mr. Mali that, in proving that the said judgment was requested and supplied to the appellant on 29/05/2023, the applicant ought to have shown to the court's satisfaction that a letter requesting for the said judgment was issued plus the exact date for issuance of the same, as issuance date indicted in the said corrected judgment in annexure HAD-4 is 11/09/2020 and not 29/05/2023 as deposed in paragraph 5 of the affidavit. In absence of such evidence as to when the alleged corrected copy of judgment was issued to the applicant, I am satisfied that the applicant failed to account for the delayed 27 days in compliance of the conditions for grant of the extension of time as enumerated in the case of **Lyamuya Construction** (supra). I hold that the delay was actuated with negligence and lack of diligence on the applicant's part which reasons have never constituted ground for extension of time. As to the contention that, the intended appeal has overwhelming chances I also find the appellant has failed to demonstrate to this court's satisfaction that, there is arguable case such as point of law or illegality of the decision calling

for attention of the appellate court. The issue is therefore answered in negative.

All said and done, in totality the application is barren of merit. I thus proceed to dismiss it with costs.

It is so ordered.

Dated at Dar es Salaam this 22<sup>nd</sup> September, 2023.



E. E. KAKOLAKI

**JUDGE**

22/09/2023.

The Ruling has been delivered at Dar es Salaam today 22<sup>nd</sup> day of September, 2023 in the presence of Mr. Michael Kayombo, advocate holding brief for advocate Anindumi Semu for the applicant and Mr. Gratian Mali, advocate for the respondent, and Mr. Oscar Msaki, Court clerk.



E. E. KAKOLAKI

**JUDGE**

22/09/2023.

