

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 400 OF 2023

(Arising from Civil Case No. 74 of 2019 Temeke District Court at Temeke)

HEMED ALLY HEMED.....APPLICANT

VERSUS

FAST TRANSPORT COMPANY LIMITED.....RESPONDENT

RULING

Date of last order: 18/10/2023

Date of Ruling: 27/10/2023

A.A.MBAGWA, J.

This is an application for extension of time within which to file memorandum of appeal against the decision of Temeke District Court (Hon. Kingwala, RM) dated 1st February, 2021. The applicant has brought this application by way of chamber summons under section 14 (1) of the Law of Limitation Act (the LLA) praying for the following orders;

- a) That this Court be pleased to extend time within which the applicant may appeal in this Court against the decision of Temeke District Court (Hon. Kingwala, RM) in Civil Case No. 74 of 2019 dated 01/02/2021.



b) Costs of the application be provided for by the respondent

c) Any other relief (s) which this Court may deem fit and just to grant.

The application is supported by the affidavits of Hemed Ally Hemed and Mr. Juma Nassoro, applicant's learned counsel. Upon service, the respondent resisted the application through the counter affidavit sworn by Peter Alfred Bana, the respondent's learned counsel along with affidavit of Fatma Khalid Hemed, respondent's Principal officer.

The facts of the matter as gleaned from the depositions may briefly be stated as follows;

The applicant instituted before the District Court of Temeke at Temeke (the trial court), Civil Case No. 74 of 2019 (the suit), praying among others to be declared the rightful owner of a motor vehicle make Scania with Registration No. T329 BRC (the motor vehicle) and its trailer with Registration No. T179 BRH (the trailer).

On 1st February, 2021, Hon. Kingwala, RM, having heard evidence and submissions of the parties, declared the applicant (the then plaintiff) the lawful owner of the said motor vehicle and its trailer and consequently dismissed the suit. The applicant believing that he is the lawful owner of the said motor vehicle and its trailer, instituted Application for Execution i.e., Misc. Civil Application No. 39 of 2021. However, the application of



execution was dismissed as executing trial court held that the decree was unexecutable.

Aggrieved by the said decision, the applicant preferred review of the judgment through Civil Review No. 2 of 2023 at the District Court of Temeke at Temeke (Before Hon. Mwankenja J.H – SRM). Again, he was unsuccessful, as the trial court on 16th June, 2023, dismissed his application for review with cost.

Consequently, on 3rd August, 2023, the applicant lodged this application, seeking extension of time to challenge the decision of the trial court of the suit by way of an appeal.

The applicant contend that the decision intended to be impugned is marred with illegalities and problematic thereby resulting to be unexecutable decree. He averred that, the trial court declared him as a lawful owner of the motor vehicle and its trailer but ended up in dismissing the whole suit.

On the adversary, the respondent had it that the act of the trial court to declare issue no. 1 that it was answered in affirmative and later on dismissing the whole suit was erroneous decision however does not constitute illegality. He averred that, the applicant failed to elaborate which type of illegality has been occasioned in the impugned decision. The respondent vehemently stated that, the applicant has no sufficient



grounds to warrant extension of time. The deponent averred that the applicant was negligent in making follow up of his case as well as applicant's counsel. The respondent further lamented that the applicant failed to account for the period of delay from 16th June, 2023 when the decision and order of the review was issued to 1st August, 2023 when he filed the present application.

When the matter was called on for hearing, Mr. Juma Nassoro, learned advocate appeared on behalf of the applicant whilst the respondent was represented by Mr. Peter Bana assisted by Mr. Benedict Muta learned advocates.

Submitting in support of the application, Mr. Juma Nassoro told the Court that after the decision of the suit, the applicant made efforts to have the vehicle handed to him. He continued that the applicant was unsuccessful so he decided to apply for review of the judgment but the court held that the applicant ought to have appealed. He submitted further that, since the time for lodging appeal had already expired, applicant had to lodge this current application for extension of time.

Further, the learned counsel had it that the applicant was declared lawful owner of motor vehicle and its trailer, but the suit was dismissed in entirety. He submitted further that, the judgment is somehow



contradictory hence its decree is not executable as exhibited in annexure B (the ruling in Misc. Civil Application No. 39 of 2021).

In view of the grounds stated in the affidavit together with the submission, the applicant's counsel prayed the Court to allow the application with costs.

In reply, Mr. Bana was of the strong view that there are no sufficient grounds demonstrated by the applicant to warrant extension of time. He submitted further that the judgment contains erroneous decision and where there is an error, an aggrieved party is bound to appeal in time.

Arguing on the ground of illegality in the decision sought to be impugned, the respondent's counsel argued that, it is a trite law that not every error committed by the court amounts to illegality. As such, it is only illegality that can warrant extension of time. Counsel submitted that, there is no illegality established by the applicant in the affidavit as illegality must have three things; *First*, that the trial court had no jurisdiction, *two*, the applicant was denied the right to be heard and *three*, the impugned suit was time barred.

On reason for the delay, the learned counsel for the respondent submitted that, the applicant has failed to account for each day of delay. He



continued that, the impugned decision was delivered on 1st February, 2021 and the applicant filed an application for extension of time for review in mid-September, 2022 which was almost seventeen months later and such period was not accounted for. To fathom his submission, the learned counsel referred to the case of **Bruno Wenceslaus Nyalifa vs the Permanent Secretary, Ministry of Home Affairs, and Another**, Civil Appeal No. 82 of 2017, CAT at Arusha at page 12 and 13, in which the Court insisted on accounting for each day of delay. He also cited the case of **Hajibhai Kara Ibrahim vs Mrs Zubeda Ahmed Lakha and two others**, Civil Application No. 573/11 of 2022, CAT at Tabora (unreported) at page 8 in which the court held that the law assists the vigilant and not those who sleep.

In fine, respondent's counsel prayed for dismissal of the application for want of merits. He also pressed for costs.

Having canvassed the rival submissions and upon appraisal of the depositions made by the parties, the pertinent issue for determination is whether the applicant has demonstrated sufficient cause to warrant extension of time.

It is common cause that grant of extension of time is exclusively discretion of the Court and that the same must be exercised judiciously. See also



the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. I should also point out that, for the court to exercise its discretion properly, applicant must adduce sufficient grounds for the delay. In other words, applicant must provide relevant material to move the court to exercise its discretion.

It is a settled law that there is no fast and hard rule as to what constitutes a good cause rather, good cause is determined upon consideration of all the obtaining circumstances in a particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam. Further, in the case of **Laurent Simon Assenga vs Joseph Magoso and Two Others**, Civil Application No. 20 of 2016, CAT at Dar es Salaam, the Court, at page 3, had the following to say;

'In determining an application under Rule 10, the issue that has to be resolved is always, whether, the applicant has shown good cause for extension of time. What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case'. (End of quote).

As such, through case laws, courts have prescribed various considerations which may be taken into account for establishing sufficient cause. The factors include illegalities in the impugned decisions, length of delay



involved, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer, diligence of a party, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372 of 2018, CAT at Dar Es Salaam to mention but a few.

I have gone through the applicant's affidavit along with the annexures. It is clear that at page 17 of the impugned decision (Annexure A), the trial court declared the applicant (the then plaintiff) as the lawful owner of the motor vehicle make Scania Cargo Truck with Registration No. T 329 BRC and its trailer with Registration No. T 179 BRH. The relevant part of the decision reads;-

*"Having discussed the above, this court finds that, one, there is no evidence to prove that the Plaintiff hired his motor vehicle make Scania Cargo Truck with Registration No. T 329 BRC and its trailer with Registration No. T 179 BRH to the Defendant through oral contract (sic) agreement. **Two, the Plaintiff is rightful owner of the motor***



vehicle in question. Three, there is no evidence to prove that the Defendant sold the vehicle in question to the Plaintiff.” (Emphasis is mine).

In the end, the trial court proceeded to dismiss the suit with no orders as to costs.

As stated under paragraphs 4, 5 and 6 of the Applicant’s affidavit in support of the application, the applicant filed, before the trial court, Application for Execution i.e., Misc. Civil Application No. 39 of 2021 believing that he was declared the lawful owner of the impugned decision and therefore entitled to get back his motor vehicles. However, his application was unsuccessful as the decree of the impugned decision was declared to be incapable of being executed, and the applicant was advised to seek the remedies available under the law.

Undoubtedly, the applicant was aggrieved with the ruling in Misc. Civil Application No. 39 of 2021, and after obtaining an extension of time, he filed in the trial court, Civil Review No. 2 of 2023, in a bid to review the impugned decision. Again, he was unsuccessful as the same was, on 16th June, 2023 dismissed with costs for want of merits

It is further averred under paragraphs 7 and 8 of the applicant’s affidavit that, he is currently not living in Dar es Salaam, thus the decision in Civil Review No. 2 of 2023 was handed down in his absence, thus he was



unaware of the verdict therein until on 26th July, 2023 when he met his advocate one Juma Nassoro who briefed him on the outcomes of the decision in Civil Review No. 2 of 2023. This assertion supported and confirmed by Mr. Juma Nassoro in his affidavit.

Upon being aware of the verdict in Civil Review No. 2 of 2023, the applicant filed the present application on 1st August, 2023 i.e within six (6) days from his being aware of the said decision. This series of events exhibits the applicant's intention to challenge the impugned decision from the very outset.

As stated above, Mr. Bana has vigorously opposed the application by stating that, the applicant has not been diligent in prosecuting his rights. It is trite law that, a claim for illegality is a sufficient cause warranting the court to extend the time. However, such an illegality must be apparent on the face of the records.

In the case of **V.I. P Engineering and Marketing Limited and Two Others v. Citi Bank Tanzania Ltd**, Consolidated Civil References No. 6, 7 and 8. CAT at Dar es Salaam at page 22, the Court of Appeal had this to say; -

"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 reason..." (Emphasis is mine).

As already pointed above, the impugned decision seems to be giving the right to the applicant by one hand and taking it away by another hand. To be more precisely, it declared the applicant as the lawful owner of the motor vehicle make Scania Cargo Truck with Registration No. T 329 BRC and its trailer with Registration No. T 179 BRH and at the same time it dismissed the suit in its entirety whereas the applicant was praying, among other reliefs, to be declared the lawful owner of the motor vehicle in dispute. In my considered opinion, this is an illegality which is apparent on the face of the record, thus constitutes sufficient cause for extending time to the applicant.

Further, as hinted above, one of the factors which is taken into account in the deliberation to grant extension of time is the degree of prejudice which each party is likely to suffer while mindful of the constitutional right of appeal. On assessing the respondent's counter affidavit, I do not see high degree of prejudice which the respondent is likely to suffer in the event this application is granted.

Having employed the established principles *vis a vis* the contents of the parties' depositions, I am inclined to hold that the applicant has demonstrated sufficient grounds for this Court to grant the extension.



That said and done, I allow the application and the applicant is given fourteen days (14) from the date of this ruling to file the intended appeal.

Each party should bear its own costs.

It is so ordered.

The right of appeal is explained.

Dated at Dar es Salaam this 27th day of October, 2023




A.A. Mbagwa

JUDGE

27/10/2023

Court: Court: Ruling has been delivered in the presence of Benedict Muta, adv holding brief of Juma Nassoro, learned advocate for the applicant also holding brief of Peter Bana, learned advocate for the respondent this 27th day of October, 2023.




A. A. Mbagwa

JUDGE

27/10/2023