

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**MOROGORO SUB REGISTRY**

**AT MOROGORO**

**MISCELLANEOUS LAND APPLICATION NO 88 OF 2023**

**[Arising from High Court Land Appeal No 23 of 2023 Originating from  
Miscellaneous Land Application no. 74 of 2019, of the District Land and  
Housing Tribunal for Morogoro District]**

**BETWEEN**

**AVINTISHI ALMASI MLIGITE.....APPLICANT**

**VERSUS**

**REHEMA NASSORO.....RESPONDENT**

**RULING**

**MRUMA, J.**

This is an application for extension of time within which the Applicant **Avinitsihi Almasi Mligite** can file an appeal out of time. The application is by way of a chamber summons and as is the practice it is supported by an affidavit sworn by the Applicant.

As it can be gleaned from the supporting affidavit, the genesis of this application is Land Application No. 74 of 2019 of the District Land and Housing Tribunal for Morogoro at Morogoro, which was decided in favour

of the Respondent. Aggrieved by the decision of the trial tribunal, the Applicant appealed to this court through Land Appeal No. 23 of 2023. The said appeal was ordered to be argued by way of written submissions and a scheduled order for filing parties' submissions were set. The Applicant who was represented by an advocate failed to file his submissions in chief and when the matter came for judgment on 23<sup>rd</sup> October 2023, the court struck it out. The court held that considering the circumstances of the case it was reasonable not to dismiss the appeal but to struck it out.

Now counting from the date the ruling of the District Land and Housing Tribunal was handed down to the time the appeal was struck out, the Appellant found himself to be out of time and hence this application.

At the hearing the Applicant was represented by Mr Richard Giray learned advocate whose brief was held by Mr. Christopher Mgala who together with Ms. Alicia Lugakingira both learned advocates represented the Respondent. The Application was argued by way of written submissions.

Mr Giray submitted that because Land Appeal No. 23 of 2023 was struck out, in law it was as if no appeal had been filed at all and that in such circumstances the only remedy available to the Applicant was to file an application for extension of time to lodge his appeal because the time for appeal had already expired. The learned counsel submitted further that

counting from the date the judgment of the District Land and Housing Tribunal was delivered to the date this application was instituted is almost a period of ten (10) months the period of which parties were prosecuting Land Appeal No. 23 of 2023. He said that counting from 23<sup>rd</sup> October 2023 when the Applicant obtained copies of the ruling and drawn order up to 30<sup>th</sup> October 2023 when this application was filed, the Applicant was busy seeking for legal assistance from a counsel who could draft, file and lodge legal documents in court. The learned counsel contended that it was unfortunately that Mr Abdul Bwanga learned advocate who represented the Applicant in appeal No 23 of 2023 did not file the submissions in chief as scheduled as a result of which the appeal was struck out. He said that the general rule of practice is that such negligence does not constitute good ground for extension of time, however, he urged this court to find that there was special circumstances in the case because the Applicant was enjoying the services of an advocate.

Submitting in support of the second reason for applying for extension of time, the learned counsel contended that judgment in Land Application No. 74 of 2019 was marred with irregularities. He mentioned the irregularities as being that the trial tribunal relied on the inconsistent and

insufficient evidence adduced by the Respondent in proving ownership of the suit land.

The learned counsel stated that reading excerpt from paragraphs 10 and 11 of the supporting affidavit the Applicant has been diligent in following up his case. He said that after after found himself aggrieved by the decision in Land Application No. 74 of 2019, he timely filed Land Appeal No 23 of 2023. It is therefore, the Applicant's counsel contention that there were good and sufficient causes to warrant the grant of this application as held in the case of **Yusuf Same & Another vs. Hadija Yusuf** (1997) TLR 347 and **Felix Tumbo Kisima vs. Tanzania Telecommunication Co. Ltd** (1997) TLR 57, where it was held that negligence of the advocate is outside the applicant's power to control.

Responding to the submission of the counsel for the Applicant, Mr Christopher Mgala, counsel for the Respondent stated that it is well known that application for extension of time is squarely on court's discretional powers upon the Applicant showing sufficient reasons for his delay. He submitted that in the present application the Applicant has totally failed to show sufficient cause to warrant this court to grant extension of time. He said that the whole submission of the counsel for the Applicant contain blames and grievances to her former counsel on the ground that he acted

negligently. The learned counsel submitted further that the Applicant has not demonstrated how he made follow ups of his case apart from engaging an advocate. He cited the case of **Salome Kahamba vs. Siril Augustino Mallya**, Misc. Civil Application no. 557 of 2021 in which the Applicant's appeal was struck out due to his advocate's negligence who failed to file written submissions as per court order. The learned counsel contended further that it was improper for the court to arrive at a conclusion that negligence was committed by the advocate without having any proof as required by section 112 of the Evidence Act [Cap 6 R.E 2022]. He said that Applicant's failure to file written submission is serious offence in our civil litigation and its consequences was stated in the case of **Micky Gilead Ndetura vs. Exim Bank (T) Limited**, Commercial Case No. 4 of 2014 where the court dismissed the proceedings on that ground only.

In his rejoinder counsel for the Applicant stated that the case of **Salome Kahamba** (supra) cited by the Respondent's counsel is distinguishable because in that case the case was dismissed for non-appearance of the Appellant and her advocate. He said that the provision of section 112 of the Evidence Act is not applicable because it is on record that the Appellant wrote a complaint letter to the court explaining how he was

failed by his advocate and that this court sympathised with him in its ruling.

Having considered the rival submissions of the parties' counsel it is my conviction that the only issue for determination by this court is whether the Applicant has been able to advance good and/or sufficient cause to warrant the grant of an extension of time.

As rightly pointed out by the counsel for the parties it is trite law that for the Applicant to be granted the extension of time to do any act which ought to have been done within the prescribed time but which was not done within that time he must show good or sufficient cause for the delay. That is the position embodied under section 14 of the Law of Limitation Act cited by the Applicant. The said law provides as follows:-

*Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.*

The above provision makes it clear that, the court may extend time for the institution of appeal or application if it is satisfied that the Applicant has given reasonable or sufficient cause for the delay. In amplifying what amount to sufficient cause, the Court of Appeal in the case of **Regional Manager Tanroads Kagera vs. Ruaha Concrete Company Limited**, Civil Application no. 96 of 2007 held that:

*"What constitutes sufficient reason cannot be laid down by any hard and fast rules".*

In the case of **CITIBANK (Tanzania) Ltd vs. TICI, TRA & Others**, Civil Application No. 6 of 2003 (unreported) where the Court of Appeal took the stance that in looking on what constitutes sufficient or good cause each case has to be looked at and considered on its own facts, merit and circumstances before arriving to a decision on whether or not sufficient cause or good cause has been shown.

It has been submitted that this application has to be considered in its own circumstances because the Applicant's appeal was struck out instead of being dismissed after this court had sympathized with him, having found that he was let down by his advocate.

I will start with this argument. In the first place parties in court proceedings should be reminded that courts are not courts of sympathy but they are courts of law and justice. Sympathy in the strictest sense of the word has no room in the court proceedings.

Secondly, while I do not have any problem with the cite old principle in our law of practice that each case must be decided on its own circumstances, I do not agree with the view that once an application or appeal is strike out, it is as if no proceedings had ever existed in court and that the remedy available is always to file fresh proceedings on the same subject matter.

The term strike out is defined in **Black's Law Dictionary 10<sup>th</sup> Edition by Bryan A. Garner at page 1649** as to remove or expunge part of the text from the rest. Thus, by ordering a suit or an application to be truck out it simply mean that the suit or application cannot proceed for trial or hearing. However its registration and admission number in court registry record remain intact and cannot be removed as well. Thus, the concept that when a proceeding is strike out is as if it was not filed or instituted at all cannot be correct interpretation of the legal term strike out.



As to the kernel of the application at hand in law when a party fails to file written submissions to support his case it is tantamount to failure to appear when the case is set for hearing and therefore failure to prosecute the case. The remedy available is dismissal of the suit or application as the case may be. In the present case no written submissions were filed in support of the Applicant's appeal. The mischief was done by his advocate one Mr Abdul Bwanga, and Mr Richard Giray (his current advocate), readily conceded to this fault. As indicated above filing of written submissions was ordered by this court and there was no application for extension of time before the date of judgment which was on 23<sup>rd</sup> October 2023. Therefore there was nothing that would have prevented court from dismissing the appeal for none prosecution. The court, however did not take that course and instead it struck out the appeal and hence this application. In the circumstance it is my view that it is a duty of this court to consider the application of this nature based not only on whether or not there is good cause for the delay, but also there is any reason for extending time to take the intended action. Having that in mind, the question is whether the reasons stated by the applicant constitutes good cause within the ambit of per section 14 of the Law of Limitation Act.

The supporting affidavit depicts that after the judgment the Applicant timely filed an appeal which was later on struck out for reasons stated. The Applicant is distancing himself from the omission and is blaming his advocate for negligence. He argues that negligence of the advocate is good cause for extension of time. I do not agree. An advocate is a person who conducts a case on his client's behalf. He is an agent of his client and has the duty to be loyal and act honestly and in accordance with the express and implied terms of their agreement. In legal practice, the general rule is that a client falls within the ambit of the maxim *qui facit per alium facit per se* which simply means that "he who acts through another, acts himself".

As rightly stated by the counsel for the Respondent the general rule is that, negligence of an advocate is not a good cause for extension of time, the Court of Appeal has restated that position in a number of cases, including the case of **The Inspector Sadick vs. Gerald Nkya** [1997] TLR 220, **William Shija vs. Fortunatus Masha** [1987] TLR 213 and **Umoja Grage vs. National Bank of Commerce** [1997] TLR 109. The fact that this court sympathised with the Applicant and strike out the appeal instead of dismissing it,

doesn't in my opinion make the circumstances of this case different/ exceptional. Sympathy of the court to give room for a party to state its case, doesn't in itself constitute good or sufficient reason for the delay in taking an action. The Applicant was duty bound to make follow up of his case in every step regardless of whether or not she engaged an advocate, this stance was taken in the case of **Lim Ham Yung & Lim Trading Company Limited vs. Lucy Kristensen**, Civil Appeal no. 219 of 2019 where the court firmly stated that;

*It is also our considered view that **even if the appellants were truthful in their allegations against their erstwhile advocates' inaction, negligence or omission, which generally, does not amount to good cause, they themselves share the blame.** The appellants cannot throw the whole blame on their advocates. We think that a party to a case who engages the service of an advocate, **has a duty to closely follow up the progress and status of his case. A party who dumps his case to an advocate and doesnot make any follow ups of his case, cannot be heard complaining that he did not know and was not informed***

***by his advocate the progress and status of his case. Such party can not raise such complaint .....***"

[emphasis added]

If the Applicant had discharged his legal obligations properly in the earliest time possible, he would have realized that his advocate had not complied with the court scheduling order well before the date of judgment and take appropriate action. He didn't do that therefore he cannot be allowed to visit the consequence of his negligence to the Respondent.

In paragraph 13 of the applicant's affidavit, she raised illegality in the Judgment of the trial tribunal as another reason for seeking extension of time. The illegality complained of is that the trial tribunal relied on inconsistency and insufficient evidence adduced by the Respondent in proving ownership of the suit land. In my view failure by the trial tribunal or court to make analysis of the evidence on record does not constitute illegality in the strict meaning of the word. The term illegality connotes an act that is forbidden by the law of procedure and making an analysis or evaluating the evidence is not among them.

In the case of **Lyamuya Construction Limited V. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010

*"Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that "of sufficient importance " and I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."*

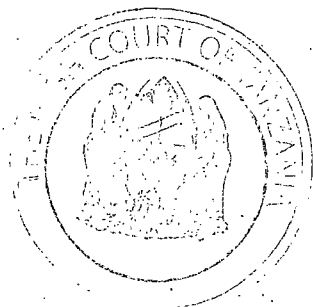
It is noteworthy to state here that illegality of the impugned decision has to be on the face of the record that can be seen just by having a glance at the judgment and not one that would be discovered by a long-drawn argument or process.


Applying the foregoing principles of the law to the case at hand, I am not convinced that the alleged illegality is clearly apparent on the face

of the challenged decision. Certainly, it will take a long process of analysing the evidence on record to realise that there is inconsistent or insufficient evidence and that the trial tribunal analysed it wrongly. That could be a ground fit for the appeal and not reason for extension.

In view of the above discussions, I find no merit in the application. The Applicant has failed to show good cause for this court to extend time for him to file an appeal out of time. I therefore dismiss the application with costs to the Respondent.

It is so ordered.



  
A.R. MRUMA

**JUDGE**

14/05/2024.

Delivered in presence of the parties this 14<sup>th</sup> day of May 2024.