

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

MISCELLANEOUS CIVIL APPLICATION NO. 29 OF 2023

(Arising from land application no.35 of 2018 of the DLHT for Morogoro for Kilombero)

THE REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZIAPPLICANT

VERSUS

BEATUS D. MACHAWA..... RESPONDENT

RULING

Date of last Order: 17/11/2023

Date of ruling: 09/02/2024

BEFORE: G. P. MALATA, J

The applicant herein filed an application seeking extension of time within which to appeal out of time against the decision in Land Application No. 35 of 2018 of District Land and Housing Tribunal for Kilombero District delivered

on 17/11/2022 in the presence of both parties. The application is made under section 41 (2) of the Land Disputes Courts Act. Cap.216 R.E.2019. The application is supported by affidavit sworn by Pancrasia Augustine Protas the learned counsel for the applicant. In the affidavit in support of the application, the applicant stated in paragraphs 6, 7, 8 and 9 disposes;

- 6. That the applicant strongly needed to challenge the trial Tribunal's decision since the proceeding is tainted with illegalities as the applicant was not fully involved,*
- 7. That I was the only advocate entrusted to represent the applicant in this matter,*
- 8. That, on 12th December, 2022 I was admitted at Rabininsia Memorial Hospital in Dar es Salaam whereby on 13th December, 2022 I was blessed with a baby boy and got a discharge on 15th December, 2022. **A copy of admission form is attached herein and marked CCM-3 to form part of this affidavit,***
- 9. That from the date I got the discharge, I was unable to manage the matter since I was in a three months maternity leave,*
- 10. That, the failure to file the memorandum of appeal on time was caused by the circumstances beyond control.*

It is evident therefore that, the reasons advanced by the applicant as ground for delay are, **one**, sickness and maternity leave which commenced on 12/12/2022 to leave and ended on 12/03/2023, **two**, she was the only advocate entrusted by the applicant, **three**, that the decision is tainted with illegalities.

The application was resisted by the respondent who filed counter affidavit by stating that, the applicant had among others failed to provide good cause for extension of time. the respondent attacked the applicant's affidavit that; **one**, there is no pinpointed illegalities on the DLHT's decision, **two**, that the applicant had choice to appoint another advocate, **three**, that the maternity leave has nothing to do with the applicant's case and **four**, that the applicant demonstrated negligent in handling the case.

On 17/10/2023, this matter came for hearing, the applicant appeared through Ms. Pancrasia Augustine Protas learned counsel whereas, the respondent appeared through Mr. Bartalomew L. Tarimo learned counsel.

In support of the application, Ms. Pancrasia Augustine Protas adopted the affidavit and asked the court to grant the application based the evidence and reasons for delay advanced by the applicant in the affidavit. She insisted

that, the application be granted as it is tainted with illegalities which will be only be corrected if the application is granted.

Finally, she submitted that, granting the application will not be prejudicial to the respondent in any way.

Mr. Bartalomew L. Tarimo learned counsel for the respondent started his submission by adopting the counter affidavit in opposition of the applicant's application. He submitted that; the applicant delayed to file appeal for more **than 133 days** of which the applicant is required to account for each day of delay. That if the advocate was at maternity leave the applicant who is the party to this case could have engaged another advocate to handle the matter.

Further, on the date of delivery of judgement on 17/11/2022, the applicant appeared through Mr. Chuwa learned counsel thus he was aware and the maternity started on 12/12/2022 while the judgement has already been delivered. He referred this court to the decision in the case of **Solomon Mmari vs Venance Benedict Minde**, Misc. Land Application No.09 of 2023 at pages 6-7 of the Ruling where this court discussed what should be considered in an application for extension of time.

Finally, he prayed that the application be dismissed for lack of good cause and failure of the applicant to account for each day of delay as required by law.

By way of rejoinder, Ms. Pancrasia Augustine Protas learned counsel for the applicant submitted that as an advocate of the applicant, she accounted for the number of days delayed by stating that, I was admitted on 12/12/2022 and discharged on 15/12/2022 and upon delivery of newly born baby boy, I started maternity leave.

Finally, she maintained that, the application be granted as prayed.

The issue for determination by this court is whether the applicant has adduced sufficient cause for delay to warrant extension of time.

To start with, for the application of this nature to be granted the applicant must fulfil what is settled by the Court of appeal in the case of **Lyamuya Construction Co. Ltd Vs. The Registered Trustees of Young Women Christian Association of Tanzania** Civil Application no. 2 of 2010 CAT (unreported), **Addija Ramadhani (binti Pazi) vs. Sylvester W. Mkama**, Civil Application No. 13 of 2018 where the court principled that;

*(a) The applicant must account for all the period of **delay***

*(b) The **delay** should not be **inordinate***

*(c) The applicant must show **diligence**, and not **apathy**, **negligence** or **sloppiness** in the prosecution of the action that he intends to take.*

*(d) If the court feels that there are other **sufficient reasons**, such as the existence of a **point of law** of sufficient importance; such as the **Illegality** of the decision sought to be challenged.*

(e) the degree of prejudice the respondent stands to suffer if time is extended;

The court of appeal has maintained similar position in **Elius Mwakalinga vs. Domina Kagaruki and 5 others**, Civil Application no. 120/12 of 2018 (unreported) and added that;

"A delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing period within which certain steps have been taken."

In the case of **Hamisi Ismail @ Zulu Vs. Republic**, Criminal Appeal no. 205 of 2015 (unreported) the court of appeal held that

"It is settled that in an application for extension of time, the applicant is duty bound to demonstrate good or sufficient cause for delay. Further, every delay, even if for one day has to be accounted for."

In the case of **Oswald Masatu Mwizarubi vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 where the Court of Appeal stated that:

"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."

In the case of **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (unreported) where the Court stated that,

"Delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"

Furthermore, illegality being among the factors to be considered in an application for extension of time has been discussed in plethora of authorities

on how it should be looked at; see the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 387, **Arunaben Chaggan Mistry vs. Naushad and others**, Civil Application no. 6 of 2006 CAT at Arusha (unreported) **Lyamuya Construction Company Limited** (supra). In the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (supra) it was stated;

The Court... 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 clear therefore that, based on the long-standing authorities of this court and court of appeal, for illegality to be accommodated, it must be; **one**, apparent and **two**, the ones touching jurisdiction, time limit, res judicata, locus standi and denial of right to be heard.

This is also echoed by the decision in the case of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference no. 13 of

2019, where the court of appeal after defining the word illegality came to the conclusion as I hereby quote;

*"From the above decisions, it is our conclusion that for a decision to be attacked on ground of illegality, one has to successfully argue that the court **acted illegally for want of jurisdiction**, or for **denial of right to be heard** or that **the matter was time barred**"*

Having tabled the governing principles, I am now in position to discuss on the advanced ground for extension of time. First Ms. Pancrasia Augustine Protas learned counsel for the applicant stated that, she was the only advocate with instructions to handle the matter, thus upon going for maternity leave the case was left with nobody to handle. This court is of the view that, the case belongs to the parties to the case not advocates. Thus, in case of any inconvenience such as one counsel going for maternity leave the party has to look for another service. The case cannot be adjourned pending one's discharging certain right. Under humanitarian if there was death of the close relative or guardian of either counsel thus failure to appear or take necessary steps if proved will constitute a good cause. However, much as we understand that, giving birth and attending maternity leave is

one's right but it should not hinder the continuation of other business, including that of the court which demands for timely dispensation of justice for all.

In the present case the matter remained unattended by the party to case and her advocate for more than 133 days for the reason of maternity leave. In my view allowing this to stand as principle will lead to failure of timely justice delivery for all.

The applicant's conduct of remaining idle for 133 days waiting her advocate to complete her maternity leave cannot in law be taken to be part of good cause which prevented the applicant from sourcing for other ways of handling the case.

In the event the ground for maternity is found frivolous and legally untenable, thus accordingly rejected.

Second, as to the ground of illegality, this court has gone through the applicant's affidavit with her submission, nowhere has mentioned what illegality is all about. For such ground to be accommodated the applicant must at least attempt to mention them for the court to see not determine as it is functus officio. The court of appeal in its decision in the case of **Charles**

Richard Kombe vs. Kinondoni Municipal Council, *supra*, has established a principle that, the illegality must be made clear and touching jurisdiction, or for denial of right to be heard or that the matter was time barred. If the illegality is not stated expressly in the affidavit how can the trial court be able to know the nature of the alleged illegality?

The applicant left the court at dilemma to go and fetch for the undisclosed illegality. It is the duty of the applicant to hunt for it and disclose to the court. In that regard, the applicant left the court with no tangible ground to rely upon in exercising its discretionary supremacies, on whether to grant or not. It is a well cherished principle that, extension of time is granted discretionally which has to be accorded judiciously, meaning that, there must be sufficient and good cause for the court to act upon in granting such extension.

Acting in contravention, this court will be in violation of the principles well settled by the superior court as stated herein above. In the event the ground of illegality also fails.

Lastly, the law requires the applicant to account for each day of delay in an application for extension of time. In the present case, the applicant delayed

for 133 days, however, by deducting the three months for maternity, if this court was to take it as good cause, still the applicant has failed to account for 43 days thus in contravention of what is stated principled by the court of appeal in the case of; **Elius Mwakalinga vs. Domina Kagaruki and 5 others**, supra, **Sebastian Ndaula vs. Grace Rwamafa**, supra and **Hamisi Ismail @ Zulu Vs. Republic**, supra where the court held,

"A delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing period within which certain steps have been taken."

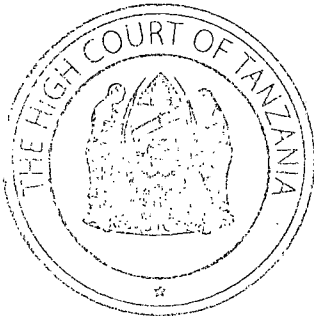
Having said all what I wanted to be said, I hereby hold that, the applicant has failed to demonstrate sufficient cause and account for number of days delayed. As such, this court has nowhere to rely upon in exercising its discretionally supremacies and grant extension of time sought by the applicant.

Consequently, the application for extension of time stand dismissed.

Each party to bear its own cost.

IT IS SO ORDERED.

Dated at MOROGORO this 09th February 2024.

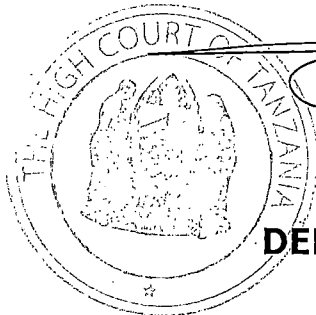


G. P. MALATA

JUDGE

09/02/2024

RULING delivered at **MOROGORO** in chambers this 09th February, 2024 in the presence of Ms. Elifrida Mutashobya, learned State Attorney holding brief of Ms. Pancrasia, learned counsel for the Applicant and in the absence of the Respondent.

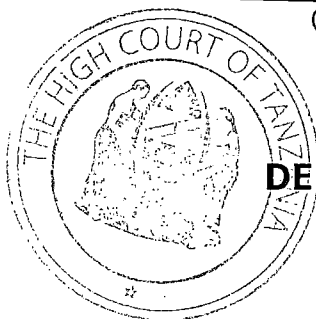


S. P. KIHAWA

DEPUTY REGISTRAR

09/02/2024

Right of appeal explained to the parties



S. P. KIHAWA

DEPUTY REGISTRAR

09 /02/2024