

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS LAND APPLICATION NO 4904 OF 2024

(Arising from Land Appeal No. 01 of 2022 dated 7th day of June, 2023 in the High Court of the United Republic of Tanzania at Babati (Hon. J. R. Kahyoza, J) and Misc. Land Application No. 233 of 2022 in the District Land and Housing Tribunal of Babati at Babati)

CHARLES GIDANYESH.....APPLICANT

VERSUS

HANOT GIDAMURJANG.....1ST RESPONDENT

PAULINA CHARLES.....2ND RESPONDENT

RULING

29th April and 6th June 2024

MIRINDO, J.:

Charles Gidanyesh has now been in the High Court three times. This Court (Kahyoza J) on 7 June 2023 dismissed his appeal against the refusal by Manyara District Land and Housing Tribunal to extend time within which he could apply for revision application of the decision of Simbay Ward Tribunal. On 9 February, 2024, this Court (Magoiga J) struck out, as being time barred, his application for leave to appeal to the Court of Appeal and certificate on a point of law.

He is now before me with an application for leave to file out of time an application for certificate on point of law for consideration by the Court of Appeal. At the hearing of the application Charles Gidanyesh adopted his affidavit and reiterated that the delay was caused by illness however in the supporting affidavit there are more reasons. He attributes delay to network problems in filing the affidavit on time and pleads irregularities in the decision of this Court (Kahyoza J).

In dealing with this application, I am bound to confront the following question: Is it open for this Court to consider a civil application for extension of time once the issue of limitation of time has been determined in a previous matter before this Court between the same parties?

As this question arose in the course of preparing this judgment, I afforded parties' opportunity to address me. The appellant argued that the application was proper and reiterated that his evidence of illness be taken into account given that he was unrepresented in this application. The first respondent contended that the application was improper and merely a delaying tactic. He asked the Court to dismiss the application with costs. The second respondent, who is the wife of the applicant, supported the application.

The application for certificate of point of law was combined with the application for leave to appeal before Magoiga J and was struck out for being as

time barred. So technically the issue of limitation of time in relation to certificate on point of law was dealt with by Magoiga J.

The right of the applicant for an extension of time subsequent to a judicial declaration that the matter was time-barred has been authoritatively addressed by the Court of Appeal. In the leading 2007 case of **Hashim Madongo and Two Others v Minister for Industry and Trade and Two Others**, Civil Appeal 27 of 2003, the appellants' application for leave to apply for prerogative orders was struck out by Kalegeya J partly because it was time-barred. After subsequent fruitless applications before the High Court and the Court of Appeal, the appellant's obtained leave to file a representative suit before Kimaro J and applied for extension of time to apply for prerogative orders. The application was dismissed by Kyando J mainly because the remedy was not to re-apply for extension but to appeal or making similar processes. Against this decision the appellants appealed to the Court of Appeal.

It was argued for the appellants that once the application was struck out by Kalegeya J, it was open to them to apply for extension of time. For the respondents it was contended that under section 3 (1) of the Law of Limitation Act, 1971, an application that is time barred is liable to be dismissed. In its judgment delivered by Msoffe JA, the Court of Appeal dismissed the appeal for the reasons that:

In the circumstances and as indicated earlier, Kalegeya, J. observed, correctly in our view, that after the appellants realized that they were late in filing an application for prerogative orders they ought to have filed an application for extension of time to apply for the orders. We think, they could have invoked the provisions of Section 14 (1) of The Law of Limitation Act, 1971 in instituting such application. Having failed to do so, there was no further opportunity for them to file the application before Kalegeya, J. In the circumstances, it was inevitable that the application before Kalegeya,J. had to be dismissed.

Having said so, we are in agreement with [... learned Senior State Attorney, that after the application before Kalegeya, J. was dismissed, as it should have been, it was not open to the appellants to go back to the High Court and file the application subject of this appeal. In fact, even the applications before Bubeshi, J. and Kimaro, J. were untenable in law. We say so because, as far as the High Court was concerned, the issue of time limitation had already been determined by Kalegeya, J. The issue was determined when Kalegeya, J. held that an application for extension of time ought to have been filed prior to filing the application for prerogative orders. In the circumstances, the only remedy available to the appellants after the dismissal of the application was to appeal to the Court of Appeal against the decision of Kalegeya,J. as opined by Kyando,J. Since they did not do so, the matter rests there.

This reasoning was in 2010 applied in **East African Development Bank v Blueline Enterprises Ltd**, Civil Appeal 101 of 2009. In this case an arbitral

award was made in favour of the respondent. The appellant's application before the High Court for an extension of time to file a petition for an order to set aside an arbitral award was marked withdrawn. Later the appellant's petition for an order to set aside the arbitral award was dismissed by this Court (Mandia J) for being time-barred. After unsuccessful attempts to appeal to the Court of Appeal, the appellant brought an application for extension of time to file petition to set aside the arbitral award. The High Court (Sheikh J) struck out the appellant's application who then appealed to the Court of Appeal. The respondent's counsel argued that once the High Court had dismissed the petition as being time-barred it was not open for the appellant to apply for enlargement of time before the High Court. The remedy was to appeal. In sustaining this ground, the Court of Appeal relying on, among others, its decision in **Hashim Madongo**, articulated the governing principle:

...it follows that once an order of dismissal is made under section 3 (1) it is not open to an aggrieved party to go back to the same court and institute an application for extension of time. The remedy is to seek review before the same court or to lodge an appeal or a revision before a higher court. The rationale is simple. That is, as far as the court is concerned the issue of time limitation has been determined. So, a party cannot go back to the same court on the same issue....It follows that, after the order of dismissal was made by Mandia, J. on 22/6/2007 it was not open to the appellant to go back to the

same court and institute the application for extension of time before Sheikh J.

In short, the application before Sheikh, J. was *res judicata*.

In a slightly different circumstances in **MM Worldwide Trading Company Limited and Others v National Bank of Commerce Limited** (Civil Appeal 258 of 2017) [2021] TZCA 192. After the Commercial Division of this Court had struck out the suit as being time-barred, the respondent successfully re-instituted a fresh suit before the Commercial Division. On appeal, the Court of Appeal held that the issue of limitation had finally and conclusively been determined in the first suit and the second case was barred by the principle of *res judicata*.

This principle was applied by this Court (Ebrahim J) in **Anderson Mwankusye v Martine Ndunguru** (Misc Land Application 119 of 2020) [2022] TZHC 10530 when the Court dismissed the application for extension of time to appeal under section 41 (2) of the Land Disputes Courts Act that was filed subsequent to the High Court's dismissal of the appeal as being time-barred.

The instant application emanated from a decision of Simbay Ward Tribunal against which Charles Gidanyesh unsuccessfully applied for extension of time to lodge revision application before Manyara District Land and Housing Tribunal.

Under section 52 (2) of the Land Disputes Courts Act [Cap 216 RE 216] the provisions of the Law of Limitation Act apply to the original proceedings before a District Land and Housing Tribunal. Unless otherwise stated, the

appellate court applies the governing law in the trial court. Hence, I am of the view that the provisions of section 3 (1) of the Law of Limitation Act [Cap 89 RE 2019] applies in present proceedings. In fact, the present application has been lodged under section 14 (1) of the Law of Limitation Act.

Consequently, there is no reason for not applying the principle elucidated in **Hashim Madongo** and **East African Development Bank**. Notwithstanding that the application before Magoiga J was struck out, it is clear from these authorities that the issue of limitation of time has already been determined by this Court. It follows that the present application is *res judicata* and it is hereby dismissed with costs.

DATED at BABATI this 6th day of June, 2024



F.M. MIRINDO

JUDGE

Court: Judgment delivered this 6th day of June, 2024 in the presence of both parties. B/C: William Makori (RMA) present.

Right of appeal explained.

F.M. MIRINDO

JUDGE