

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

MISC CIVIL APPLICATION NO.174 OF 2024

ABDUL OMARY MPURUTI.....APPLICANT

VERSUS

AFRICAN MICROFINANCE LIMITED.....1ST RESPONDENT

NURU RAMADHANI NASSIB.....2ND RESPONDENT

RULING

Last date: 17/05/2024

Date of Ruling: 18/06/2024

A.A. MBAGWA, J.

This is an *ex parte* application for an extension of time within which to appeal against the decision of the Court of the Resident Magistrate of Dar es Salaam at Kisutu in Civil Case No. 235 of 2015.

The applicant has moved this court under section 14 of the Law of Limitation Act praying for the following orders;

1. That this Honourable Court may be pleased to extend the time for the applicant to file an appeal out of time.




2. Costs of this Application to be provided for.
3. Any other reliefs as this honourable Court shall deem fit and just to grant.

The application is supported by an affidavit affirmed by the applicant, Abdul Omary Mpuruti. The applicant banks his prayers on two grounds namely, sickness and illegality to wit, lack of jurisdiction. He states that after the delivery of the judgment he fell sick for quite a while hence he was unable to process the appeal within time. The applicant also complains that the matter was entertained by the Court of the Resident Magistrate of Dar es Salaam whereas it was purely a land case.

The efforts to serve the respondents through normal service proved futile hence this court, upon the application by the applicant's counsel, ordered service by publication. Consequently, the respondents were duly served through publication namely, Mwananchi Newspaper dated 21/03/2024. Nonetheless, they neither entered an appearance nor filed counter affidavits to contest the application. As such, this court ordered an *ex parte* hearing against the respondents.

At the hearing, the applicant was represented by Mr. Godfrey Francis, the learned advocate. Submitting in support of the application, the applicant's counsel had it that the decision sought to be challenged is marred with



illegalities. He argued that this alone is a sufficient reason for the extension of time. He expounded that the trial Court entertained the matter that it had no jurisdiction. On this, he cited the case of **Principal Secretary Ministry of Defence vs Devram Valambia** [1992] TLR 182 in which the court held that illegality is a sufficient ground for extension of time. In addition, the applicant's counsel referred this Court to the case of **Attorney General vs Tanzania Ports Authority and another**, Civil Application No. 87 of 2016, CAT at Dar es Salaam at page 11. He argued that since the matter was purely a land matter, the trial court did not have jurisdiction to entertain it and for that reason the judgment is tainted with illegalities. He stressed that the applicant is entitled to an extension of time in order to challenge its decision.

Upon appraisal of the facts above, the pertinent issue for determination in this application is whether the applicant has demonstrated sufficient grounds to warrant the extension of time. It is common cause that an extension of time is granted at the discretion of the court upon the applicant adducing sufficient grounds. See **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. It is also settled law that there is no hard and fast rule as to what constitutes sufficient grounds. The



practice tells it all that sufficient ground is established upon consideration of all the circumstances obtaining 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 and **Laurent Simon Assenga vs Joseph Magoso and Two Others**, Civil Application No. 20 of 2016, CAT at Dar es Salaam. The factors that are invariably considered by the court include the length of delay, the applicant's diligence, the prejudice that is likely to happen to the parties, the constitutional right to appeal, and the existence of illegality. I have keenly pondered on the prejudice that is likely on the applicant's side and the applicant's right to appeal. Having assessed all the circumstances and alive to the fact that the applicant's averments in the applicant's affidavit in particular the complaint regarding the jurisdiction of the court is uncontested, I am inclined that the applicant deserves an extension of time so that he can be heard on appeal about his grievances .

That said and done, I am satisfied that the applicant has exhibited sufficient grounds. I therefore allow the application. The applicant is given thirty days to file the appeal from the date of this ruling. Since the respondents did not appear to contest the application, I make no orders as to costs.



It is so ordered.

The right of appeal is explained.



A handwritten signature in blue ink, appearing to read "A.A. Mbagwa", with a horizontal line underneath.

A.A. Mbagwa

JUDGE

18/06/2024