

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(IRINGA SUB-REGISTRY)
AT IRINGA

MISCELLANEOUS LAND APPLICATION NO. 23 OF 2022

(Arising from the decision of the District Court of Iringa in Matrimonial Cause
No. 02 of 2019)

NOORAT SALUM SHAMLA APPLICANT

VERSUS

GABRIEL REWIJO LWISA (As an Administrator of
the Estate of the Late **SULEMANI LWISA**) **RESPONDENT**

RULING

Date of Last Order: 21/03/2024 &
Date of Ruling: 10/05/2024

S.M. KALUNDE, J.:

In this application the applicant is seeking for extension of time within which to file an appeal out of time against the decision of the District Court of Iringa sitting at Iringa in Matrimonial Cause No. 02 of 2019. The application is preferred under sections 14(1) of **the Law of Limitation Act [Cap. 89 R.E. 2019]** ("the LLA") and 95 of **the Civil Procedure Code [Cap. 216 R.E. 2019]** (hereinafter "**the CPC**"). The application is supported by an affidavit duly sworn by **Mr. Jassey Samuel Mwamgiga**, learned counsel for the applicant.

The application was resisted by the respondent who instructed his learned advocate, **Mr. Emmanuel Kalikenya Chengula**, to file a counter affidavit resisting the application. However, on the 01st day of June, 2023, Mr. Chengula informed the court that he was withdrawing his representation of the respondent on account that he had no proper instructions from the respondent.

The matter was adjourned on several occasions from the 01st day of June, 2023, to the 21st day of March, 2024, when an order for ex parte hearing was pronounced.

At the hearing the applicant was represented by Mr. Mwamgiga. In support of the application, the learned counsel submitted that the main ground for the application was illegality in the proceedings of the District Court. In amplifying the point, the learned advocate submitted that the trial court had no jurisdiction to entertain the matter for lack of jurisdiction. He added that in light of the decision in the case of **Lyamuya Construction vs. Board of Registered Trustees of YWCA Tanzania**, Civil Application No. 2 of 2010, an illegality in the decision sought to be challenged is a sufficient ground for extension of time.

Explaining about the illegality, Mr. Mwamgiga submitted that the pleadings and the impugned decision shows that the parties professed Islam and they contracted Islamic

marriage. He added that in accordance with section 75 of **the Law of Marriage Act [Cap. 29 R.E. 2019]**, all matters involving Islamic and customary law are to be dealt with by the Primary Court or District Court. According to him, the matter was entertained by the District Court of Iringa which is contrary to section 75 of the LMA. The learned counsel stated that the District Court for Iringa had no jurisdiction to entertain the matter.

In his submissions, the learned counsel conceded that the matter was initially filed at the Bomani Primary and later parties agreed to transfer the same to the District Court as stated in the counter affidavit. Even then, the learned counsel argued that, where a court is granted with exclusive jurisdiction, that jurisdiction cannot be transferred by virtual of the party's agreement or decision. He added that despite parties agreeing to transfer the matter from the Primary Court to the District Court that action did not vest jurisdiction to the District Court. In the opinion of the learned counsel, the decision taken by the District Court to transfer the matter from Bomani Primary Court was a contravention of section 75 of the LMA.

Mr. Mwamgiga concluded that, whilst the law allowed for transfer of cases, the transfer must consider the exclusive jurisdiction of courts in entertaining matters of

certain nature as provided by specific laws. He cited the case of **Abdallah Ali Selemani t/a Ottawa Enterprises (1987) vs Tabata Petrol Station and Another**, Civil Appeal No. 69 of 2017 [2019] TLR (1) CA at page 13 for a position that jurisdiction is a creature of a statute. He concluded that since the exclusive jurisdiction to entertain Islamic proceedings is vested to the primary court that jurisdiction cannot be vested to another court by an agreement or request of the parties.

Relying on the above submissions, the learned counsel prayed that the application be granted, and an extension of time be issued so that the applicant may lodge the appeal out of time so that the illegality may be addressed.

Having considered the pleadings and submissions made by the counsel for the applicant, my duty now is to examine whether the applicant has demonstrated **"reasonable or sufficient cause"** as required by section 14(1) of the LLA for this court to exercise its discretion in condoning the delay. The said section reads:

*"14.- (1) 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."

[Emphasis is mine]

The above section supposes that the court has a discretion to grant or refuse an application for extension of time. In accordance with the respective section, the discretion is upon demonstration of "reasonable or sufficient cause". However, as was held in **Farida F. Mbarak & Another vs Domina Kagaruki & Others** (Civil Reference 14 of 2019) [2021] TZCA 600 (20 October 2021) TANZLII, there are no invariable definition or hard and fast rules as to what constitutes "good cause" or "reasonable or sufficient cause". I am aware that, in exercising its discretion and determining whether good cause has been shown to warrant extension of time, the court, depending on the circumstances of each case, has to look at a number of factors such as whether the applicant was diligent, reasons for the delay, the length of the delay, the degree of prejudice to the respondent if time is extended, whether there is an arguable case such as whether there is a point of law or the illegality or otherwise of the impugned decision.

The main "reasonable or sufficient cause" cited in the present case is illegality in the decision sought to be challenged. I am aware that, in our jurisdiction, it has come to be accepted that where the point at issue is one alleging

illegality of the decision being challenged, the court has a duty to extend time for the purpose of ascertaining the point and take appropriate measures to put the matter and the record right. This position was stated by the Court of Appeal in the case of **The Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** (1992) T.L.R 182 that:

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right."

The above decision was followed in several subsequent decision of the Court including in the cases of **Kalunga and Co. Advocates v National Banks of Commerce Ltd** [2006] TLR 235; **VIP Engineering and Marketing Ltd and 2 Others v. Citibank Tanzania Ltd**, Consolidated Civil Reference No. 6, 7 and 8 of 2006; and **Ezrom Magesa Maryogo v. Kassim Mohamed Said and Another**, Civil Application No. 227 of 2015 (all unreported).

In the case of **Ezrom Magesa Maryogo** (supra) for example the Court of Appeal stated that:

"Even if there was an attributed negligence on the initial advocate of the applicant to timely

*lodge an application for leave to appeal, the applicant deserves the grant of enlargement of time to seek leave on the complaint of illegality of the impugned decision which has not been vigorously contested by the 1st respondent **The complainant raising possible illegality constitutes good cause whether or not a reasonable explanation has been given to account.***"

[Emphasis is mine]

There is no dispute that the impugned decision was delivered on the 11th day of February, 2021 and the present application was filed almost a year and eight months later. The applicant is challenging the jurisdiction of the trial court in entertaining the matter on the ground that the matter ought to have been dealt by the Bomani Primary Court instead of the District Court where it was subsequently transferred. In my considered view, this is a serious allegation which necessitates to be addressed regardless of whether or not the applicant has accounted for each day of the delay.

Having considered the records and submissions made, I am content that the issue is important and apparent on the face of records. Accordingly, guided by the above cited authorities, and having considered the circumstances of this case, I am convinced that the applicant has demonstrated

“good and sufficient cause” for this court to exercise its discretion in granting the application.

For the foregoing reasons, I find the application to be meritorious and accordingly allow the same. Accordingly, I order that the appeal must be filed within thirty (30) days from the date of this decision. No order for costs is made.

It is so ordered.

DATED at IRINGA this 10th day of May, 2024.



A handwritten signature in blue ink, appearing to read "S.M. Kalunde", is written over the printed name.

S.M. KALUNDE

JUDGE