

IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

DAR ES SALAAM

**MISCELLANEOUS COMERCIAL APPLICATION CASE NO. 227 OF
2022**

**(Arising from Commercial Case No. 50 of 2020 and Misc. Commercial No.
189 of 2021)**

ALEX MSAMA MWITA.....APPLICANT

Versus

YUSUFU SHABANI OMARY.....1st RESPONDENT

BANK OF ARICA (T) LIMITED2nd RESPONDENT

LAURA BONIVENTURE MALYA MASERA3rd RESPONDENT

TEGEMEZE AUCTION MART LIMITED4th RESPONDENT

Date of Last Order: 28/03/2023

Date of Ruling: 12/05/2023

RULING

MKEHA, J

The applicant is moving the court for an order of extension of time within which to file an application for review out of time against execution order of this court dated 08th November 2022. The application is made under section 14 (1) of the Law Limitation Act. The chamber summons is supported with an affidavit sworn by Mr. Alex Msama Mwita, the applicant. On the other hand, the application is contested through counter affidavits sworn by Mr. Shadrack Manyama, Principal Officer of

the 2nd respondent and the one affirmed by Mr. Yusufu Shabani Omary, the 1st respondent.

In the affidavit supporting the application the reasons for delay have not been made certain. However, the affidavit attempts to indicate that the executing court's order is tainted with illegality. Mr. Kanonyele learned advocate for the applicant submitted that in terms of Order XXI Rule 20 (1) of the CPC the executing court ought to have issued a notice to show cause to the applicant before issuing the execution order. The learned advocate for the applicant was however frank that, the application for execution which the court granted without issuing notice to show cause to the applicant was not the first application to be preferred in respect of the decree under execution.

Mr. Mayenga learned advocate for the 1st respondent submitted in reply that, whereas the reasons for delay had not been stated, the alleged illegality could not be traced. Mr. Irungu learned advocate for the 2nd respondent was also of the view that, the reasons for delay had not been stated by the applicant.

The only issue for determination is **whether the applicant has accounted for the delay.** The applicant had a duty to account for every single day of delay. The applicant's affidavit falls short of that. It is

true that illegality if sufficiently indicated, suffices to be a ground for extension of time. However, as it was held in **NGAO GODWIN LOSERO VS JULIUS MWARABU, CIVIL APPLICATION NO. 10 OF 2015 CAT, AT ARUSHA**, illegality must be apparent on the face of record, such as the question of jurisdiction and not one that would be discovered by long drawn argument or process. Mr. Kanonyele's concession that the application for execution which resulted in the impugned execution order was not the first to be preferred, goes against his previous submission that there is illegality on the face of the record in respect of which extension of time can be granted.

For the foregoing reasons the application stands dismissed with costs for being unmeritorious.

Dated at Dar es Salaam this 12th day of May, 2023.




C.P. MKEHA

JUDGE

12/05/2023

Court: Ruling is delivered in the presence of the parties' advocates.




C. P MKEHA

JUDGE

12/05/2023