

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 150 OF 2023

*(Arising from the Judgment & Decree of the High Court of the United Republic of Tanzania
(Commercial Division) at Dar es Salaam, in Commercial Case No. 54 of 2015 delivered on 04th
of November 2016 before Hon. Mansoor, J)*

KHADIJA ABDUL FARAJI APPLICANT

VERSUS

APEL PETROLEUM LIMITED 1ST RESPONDENT

AHACO OIL LIMITED 2ND RESPONDENT

KISHE AUCTION MART CO. LIMITED 3RD RESPONDENT

MUBEZI BRIAN LUKWABE 4TH RESPONDENT

RULING

Date of last order: 19/02/2024

Date of ruling: 15/03/2024

AGATHO, J.:

This application was brought under certificate of urgency. The applicant through chamber summons and supported by two affidavits one by her own and the other deponed by Richard Kimaro, advocate applied to this court for the following orders:

- (a) The court be pleased to extend time so that the applicant may lodge the notice of intention to appeal against the entire judgement and

decree in commercial case No. 54 of 2015 terminated at the High Court of the United Republic of Tanzania (Commercial Division).

(b) Any other orders this court deems fit to grant.

While the 1st respondent did not object the application, the 3rd and 4th respondents resisted it by filing their counter affidavit dated 9th January 2024. It is on record that the 1st respondent was represented by Anindumi Semu, advocate. Moreover, advocate Harry Mwakalasya represented the 3rd and 4th respondents. The record further shows that the 2nd respondent never entered appearance despite being served upon via substituted service through publication in Mwananchi Newspaper date 1st December 2023. The applicant appeared in person most of the times. However, on 05/10/2023 Mr Alfred Rweyemamu, advocate appeared for her. It is noted that on 11/10/2023 the applicant informed the court that she has not engaged any advocate. Hence, she will prosecute the case herself. But I have noted that advocate Richard Kimaro swear an affidavit in support of her application.

The record of proceedings shows that on 13/12/2023 advocate Anindumi Semu for the 1st respondent told the court that they are not challenging the application. On the same date Mr. Albert Lema, advocate held the brief of advocate Harry Mwakalasya for the 3rd and 4th respondents. He prayed that

they be served upon with the summons and application. They were served upon, and later filed their counter affidavit.

On 14/12/2023 the applicant entered appearance while all respondents were absent. The matter was adjourned to 19/02/2024. On that day the applicant informed the court she has effected service of summons to all the respondents. She wondered as to why they were absent. She thus prayed to conduct hearing of the application ex parte against the 2nd, 3rd and 4th respondents because the 1st respondent has initially told the court that she is not contesting the application. Being a lay person and unrepresented, the applicant requested to conduct hearing by way of written submissions. The court granted both prayers.

In this application the applicant is seeking an extension of time to issue notice of appeal to appeal to the Court of Appeal (CAT) against the judgment and decree of this court dated 4th November 2016. The application was brought under Section 11(1) of the Appellate Jurisdiction Act [cap 141 R.E. 2019] which empowers this court to extend time for giving notice of intention to appeal. But it is the law that for extension of time to granted there must a sufficient cause.

The applicant, through her affidavit and the affidavit of advocate contains grounds to support the application. According to the applicant these grounds constitute sufficient cause. It is the duty of this court to scrutinize the

application and affidavits to see if they really contain sufficient cause. What amounts to sufficient cause depends on the circumstances of a particular case.

Looking at the application at hand, counting from the time the judgment was delivered up to the time of filing this application (2nd October 2023) it is almost seven years. It is trite law rightly held in **Tanga Cement Co. Ltd v Jummane D. Masangwa and Another, Civil Application No. 6 of 2001 CAT** that the applicant is duty bound to account for each day of delay. She must tell the court what she was doing in each day constituting the delay. In the present application, the applicant in her affidavit averred facts about the delay while the affidavit of advocate Richard Kimaro avers the points of illegality of the judgment sought to be challenged on appeal at the CAT.

The applicant's affidavit recounted the events from the time the Commercial Case No. 54 of 2015 was instituted. She also averred in paragraph 5 that she had been prosecuting the cases in the courts of law during the time of the delay. Following the judgment delivered on 11/11/ 2016 she filed in this court Misc. Commercial application No. 376 of 2017 which was an attempt to object the execution proceedings. But it was struck out by the ruling of this court dated 9th January 2018. She thereafter filed a Land Case No. 77 of 2018 before the HCT Land Division that too was struck out on 23rd October 2020.

The execution proceedings in this court went ahead in 2022 and as per paragraph 6 of the applicant's affidavit the property was auctioned by 3rd respondent and the 4th respondent emerged a successful bidder. The applicant then filed Misc. Commercial Application No. 183 of 2022 which was withdrawn on 17th October 2022. In a desperate attempt to rescue the property she wrote a letter to Hon. Chief Justice. She was advised to pursue the matter through ordinary court procedures.

On paragraph 7 the applicant states in her affidavit that in September 2023 she learnt that the 4th respondent had applied to the Registrar of Titles seeking rectification of the land register. That was the time when the applicant visited Women Legal Aid Centre (WLAC) for legal advice and representation. It was her averment that the 4th respondent has initiated the process of transfer of title. The counter affidavit of the 3rd and 4th respondent in paragraph 5 confirms that the 4th respondent has initiated the process of transfer of the title.

On paragraph 8 of the applicant's affidavit, she avers that WLAC lawyers advised her that the judgment of this court dated 11th November 2016 is tainted with illegality. She averred further that she was advised that she did not meet the required criteria for legal aid. She could thus not be assisted further by WLAC. She also realized that the time for preference of an appeal had lapsed.

Paragraph 9 of the applicant's affidavit avers that the applicant lost her husband in 2018, and she also had been diligently pursuing her rights in the courts as the records show. She was thus not negligent.

The applicant's affidavit was flanked with the affidavit of her advocate, one Richard Kimaro. The latter's affidavit in paragraph 3 avers that the proceedings and judgement in Commercial Case No. 54 of 2015 is tainted with illegalities that need observation of the Court of Appeal. These illegalities are:

- (i) That the purported contract of guarantee is not in compliance to (sic) the laws of the land which requires all dispositions to be in writing and there is no such written document that was admitted as evidence before the court records.
- (ii) The trial court enforced terms of guarantee that were not placed before it.
- (iii) That no diligence was made to see whether the 3rd respondent had a title to make any disposition of the suit premises.
- (iv) That the suit in Commercial Case No. 54 of 2015 were commenced by a private company in absence of a board resolution.

Having sketched what is averred in the affidavits of the applicant and her advocate, Richard Kimaro, it is high time this court makes an analysis of the said facts and determine this application. The law on extension of time requires

for the extension of time to be granted, one has to show sufficient cause. Moreover, and as rightly held in **Tanga Cement Co. Ltd v. Jummane D. Masangwa and Another, Civil Application No. 6 of 2001 CAT** that each day of delay must be accounted for. Further, there should be no negligence.

Also, if there is illegality that is a sufficient cause regardless of the length of the delay as per **Attorney General v. Wafanyabiashara Soko Dogo Kariakoo Cooperative Society Ltd, Misc. Application No. 606 of 2015**. In that case at page 10, the extension of time was granted due to illegality that was considered as a sufficient cause despite the Applicant's delay for 12 years. Further, in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 CAT** it was held that illegality is a good ground for extension of time.

Glancing at the affidavit of the applicant, it shows that she has been diligently pursuing her rights in the courts as shown hereinabove. Her two applications were struck out. The third one she withdrew herself. The 3rd and 4th respondent resisted the application in their counter affidavit paragraph 6 averred that the applicant had an opportunity to object the execution proceedings but she decided to withdraw it. Despite that contention by the 3rd

and 4th respondents I find that the applicant has managed to account for the days of the delay.

I have also noticed that the 3rd and 4th respondents in their counter affidavit did not address the applicant's averment of illegality in the judgment of this court as seen in paragraph 8 of the affidavit in support of the application. Detailed averments on illegalities of the judgment and decree sought to be appealed against is found on paragraph 3 of the affidavit of Mr. Richard Kimaro, advocate. But surprisingly the 3rd and 4th respondents completely ignored that second affidavit. It is unclear why.

Nevertheless, truly illegality is a critical point. It is the law that illegality constitutes sufficient cause to extend time. The affidavit of advocate Richard Kimaro had pointed out some illegalities that are worth examined by the CAT.

For the foregoing reasons, I find the application at hand to have merit.

The court orders that:

1. The application for extension of time to file notice of appeal is granted.
2. The applicant is given 14 days from the date of receiving a copy of this ruling to file her notice of appeal.
3. Considering the circumstance of the application no order as to costs is given.

Order accordingly.

DATED at **DAR ES SALAAM** this 22nd Day of March 2024.



U. J. Agatho

U. J. AGATHO

JUDGE

22/03/2024

Court: Ruling delivered today, this 22nd March 2024 in the presence of applicant, and Harry Mwakalasya for the 3rd and 4th respondents, but in the absence of the 1st and 2nd respondents.



U. J. Agatho

U. J. AGATHO

JUDGE

22/03/2024