

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 1041 OF 2017**

*(Originating from Ilala District land and Housing Tribunal in*

*Misc. Application No. 16 of 2008)*

**DAVID ZHORZHOLADZE .....APPLICANT**

**VERSUS**

**MATRIDA KIMEME .....1<sup>ST</sup> RESPONDENT**

**PRISCA KIMEME .....2<sup>ND</sup> RESPONDENT**

**DOROTH KIMEME .....3<sup>RD</sup> RESPONDENT**

**GERADINE KIMEME .....4<sup>TH</sup> RESPONDENT**

**ROBISON KIMEME .....5<sup>TH</sup> RESPONDENT**

**VERONICA KIMEME .....6<sup>TH</sup> RESPONDENT**

**G.J. KIMEME .....7<sup>TH</sup> RESPONDENT**

*Date of the ruling 3/12/2020*

*Date of the last order 27/10/2020*

**MAIGE, J**

**RULING**

In pursuance of rule 8(1) & (2) of the **Advocates Remunerations Orders, GN No. 264 of 2015**, the applicant has initiated a motion for extention of time to apply for reference against the decision of District

Land and Hosing Tribunal for Ilala (“the trial tribunal”) in Misc. Application No. 16 of 2008 which was for Bills of Costs.

The decision under discussion was delivered on 14/11/2014. The instant application was filed on 27/11/2017. It is about three years from the date of the decision. Come what may, the delay exhibited in this case is exorbitant and it is in rare cases that it can be condoned.

The factual justification for the delay is based on the unopposed affidavit of the applicant. It has been substantiated by the written submissions by his counsel Heri Zuku. The respondents whom were absent on the date of hearing, did not file any written submissions in rebuttal. I would presume that they have nothing to say.

In his submissions, Mr. Zuku made an elaborate exposition of the principles of law governing extension of time. I subscribe to him that, for the Court to grant an extension of time, the applicant must establish by affidavit or otherwise that, he was prevented by sufficient cause from timely pursuing his action. I equally agree with him that, though the Court enjoys discretion to grant or not an extension of time, the same has to be exercised judiciously with sound judicial principles.

The term “sufficient cause” which is a central criterion for granting an extension is not statutorily defined. Nevertheless, case law provides some pertinent guidelines to be considered for determination of same. For instance, in **LYAMUYA CONSTRUCTION COMPANY LIMITED VS. THE BOARD OF THE REGISTERED TRUSTEES OF YOUNG WOMEN’S CHRISTIAN ASSOCIATION, CIVIL APPLICATION NO. 2 OF 2010**, the **CAT** outlined the following four factors to be considered:-

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

The four above guidelines in my view may not be exhaustive. Neither does each and every one apply in every case. Therefore, in **INSURANCE TANZANIA LIMITED VERSUS KIWENGWA STRAND HOTEL LIMITED, CIVIL APPLICATION NO. 111 OF 2009** the CAT remarked

that; " *there could be many other factors, that could arise from the facts of each case*".

While the first three guidelines intend to test if the applicant was not prevented from timely pursuing the intended action by inaction or negligence, the last one intends to test if the extension of time is necessary for correction of illegality in the record of the lower tribunal. This principle was enunciated in **THE PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICE VS. DEVRAM VALAMBIA**

**(1992) TLR 185** where the Court of Appeal remarked as follows:-

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

This principle has been consistently repeated in various decisions of the Court of Appeal including the authority in **KALUNGA AND COMPANY ADVOCATE VS. NATIONAL BANK OF COMMERCE LIMITED (2006) TLR 235** and **LYAMUYA CONSTRUCTION COMPANY LIMITED (SUPRA)**

In his submissions, the counsel has further adopted the facts in the affidavit and urged the Court to hold that sufficient cause for extension of time has been demonstrated. He has pinpointed some factual grounds which justify the delay. The first ground addresses the period between the date of the delivery of the decision to 8<sup>th</sup> November 2016 when he became aware of the existence of the same. It is accounted for on the ground that the applicant was not aware of the decision. I have no reason to doubt the claim.

The delay of a period of more than year in between November 2016 to the date of filing the instant application is justified on account of prosecution of various proceedings. He mentions two of them. The first one being an application for stay of execution which is claimed to have been filed 8<sup>th</sup> November 2016. I do not think however that the prosecution of such an application can be relevant in the instant application. The reason being that an application of such nature cannot by itself fault the impugned decision.

Yet there is claim in the affidavit that, the delay was caused by prosecution on what the deponent of the affidavit calls as an *omnibus* application for reference filed it on 22<sup>nd</sup> November 2016 and withdrawn on 20<sup>th</sup> July 2017.

The registration number of the said application is not in the affidavit. Neither has there been attached a copy of any document relating to the said application. In the circumstance therefore, there is no factual basis to ascertain connection between prosecution of the said application and delay to institute the intended application for reference. In any event, the affidavit does not justify the period of more four months from the date of the withdrawal of the alleged application and that of filing the instant application. In my opinion therefore, the applicant has failed to factually account for the delay.

Asides from factual grounds, the applicant relies on illegality as a ground for extension of time. One of the element of illegality is that the application for Bill of Costs was filed out of time. He justifies his contention on a copy of the application for Bill of Costs which is attached in the affidavit and marked DZ-8. The said copy however does not have a registration number of the application. It does not indicate the date when it was filed and received by a registry officer as well. In the circumstance, this Court cannot place reliance on the said document to establish the date of the filing of the application for the Bill of Costs in question. There has thus not been demonstrated any serious issue of illegality apparent on the face of the

record which would justify extension of time. Instead, the applicant is supported by unsubstantiated complaints in the affidavit and the counsel's submissions. With such unsubstantiated complaints, this Court cannot decide if the alleged illegality is apparent on the face of record. On this, I am backed with the authority of the Court of Appeal in **OMARI ALLY (AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE SELEMAN ALLY NAYMALEGE) AND OTHERS VS. MWANZA ENGINEERING WORKS, CIVIL APPLICATION NO. 98/08 OF 2017** where it was observed that;

*"Applying the above settled position to the instant application, I have no difficulty in holding that the applicant's contention that the decision sought to be challenged is fraught with illegalities is nothing but an unsubstantiated general complaint. Without the details of the alleged illegalities, it is impossible to determine whether the said illegalities are apparent on the face of the record and that they are of sufficient importance to merit the attention of this court."*

In view of the foregoing therefore, the application is devoid of any merit and it is hereby dismissed. I will not give an order as to costs in the circumstance.

It is so ordered.



MAIGE.I  
JUDGE  
03. 12.2020.

**Date: 03/12/2020**

**Coram:** Hon. S.H. Simfukwe - DR

For the Applicant: Absent


For the Respondent: 5<sup>th</sup> and 7<sup>th</sup> Present

**RMA:** Mkwizu

**COURT:**

Ruling delivered this 03<sup>rd</sup> day of December, 2020 in the presence of the 5<sup>th</sup> and 7<sup>th</sup> Respondent and in the absence of Applicant and 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondent.



  
S.H. Simfukwe  
**DEPUTY REGISTRAR**  
**03/12/2020**