

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPLICATION NO. 195 OF 2020

(Arising from Land Appeal No. 84 of 2015 a (Wambura, J) dated 5th August 2016)

BAHATI NOVA.....1ST APPLICANT

MR. MACHELA.....2ND APPLICANT

VERSUS

TUNU ABDALLAH MGENI.....RESPONDENT

RULING

I. MAIGE, J

By this application, it would seem, the applicant is praying for enlargement of time within which to apply for leave to appeal to the Court of Appeal against the decision of this Court as per Madame Judge Wambura dated 5th August 2016. Initially, this Court as per Madame Judge Wambura, granted the applicant 14 days extension of time from 05/05/2017 to file his intended application. That was vide Misc. Land Application No. 776 of 2016.

Subsequently and after the expiry of the 14 days notice period, the applicants, without any order of the Court enlarging time, filed, vide Misc.

Land Cause No. 389 of 2017, an application for leave to appeal to the Court of Appeal. It was struck out, by Madame Judge De-Melo on 27th November 2018, for being time barred.

In their affidavit through their counsel Easter Elias Shoo, the applicants justify the delay on account that, they were prosecuting Misc. Land Cause No. 389 of 2017 and Misc. Land Application No. 128/2018. In addition, they rely on illegality as a justification for the application. The element of the illegality, according to paragraph 13 of the affidavit is that the appellate Judge determined the appeal *ex parte* against the second applicant without there being a proof of service.

In her written submissions, Miss Easter, learned advocate for the applicants adopts the facts in the affidavit and submits that, sufficient cause for time enlargement has been accounted for. She submits that, the striking out of the initial application was not on account of any fault or inaction of the applicants but Court's administrative logistics. She clarifies that while the application was presented for filing well within time, it took seven days for it to get admitted and registered and hence the delay.

In his submissions in rebuttal, the Mr. Omary Abubakar, learned advocate for the respondent contends that, the delay to timely file the application has not been justified in affidavit. He submits that, while the last proceeding was withdrawn on 24th February 2020, this application has been filed on 15th April 2020 being hardly two months after. He submits therefore that, this period has not been accounted for as the law requires.

The allegation as to illegality, the counsel remarks, cannot be the basis for enlargement of time. He assigns two reasons. First, in the substantive application for extension of time which was granted, illegality was not raised as a ground for extension of time. In his view therefore, the raising of the ground in this application is an afterthought. In any event, he submits, there is no evidence from the judgment to suggest that the second applicant was denied a right to be heard.

In her rejoinder submissions, Miss Ester recapitulates on the issue of illegality maintaining that it can stand by itself as a sufficient ground regardless of whether or not a reasonable explanation has been given. She cited numerous authorities including the celebrated authority of **VIP Engineering Market**

Limited and Two Others vs. Citibank Tanzania Limited,
Consolidated Reference No. 6,7 and 8 of 2006 (CAT-Unreported).

I have considered the rival submissions in line with the affidavit. I agree with the respondent and his counsel that, the applicants have not demonstrated sufficient cause for extension of time. I will validate my opinion as I go along.

On illegality, the complaint is that the second applicant was denied a right to be heard because the *ex parte* determination of the appeal continued without there being evidence of service. Assuming that the claim is valid, it could, in my opinion, not be relevant in the instant application. The reason being that, the remedy for a person who is denied a right to be heard for the reason of the proceeding being determined *ex parte*, is to apply for setting aside the *ex parte* decision and not to appeal. The remedy for appeal would only arise if the applicants were intending to fault the substance of the decision. In this matter, the enlargement of time is not for the purpose of setting aside the alleged *ex parte* decision. It is for leave to appeal against the same. In any event, I agree with the counsel for the respondent that, the justification for delay having been considered in the initial decision, the

applicants would have not been expected to raise the same for the first time in an application for enlargement of time.

On the justification for delay, the applicants have relied on prosecution of other proceedings. The first proceeding is Misc. Application No. 389 of 2017. There is no doubt that, on 18th May 2017 when it was being received and stamped by the registry officer, it was within the allotted 14 days. In the process of admission and registration, it would appear to me, much more time was spent and hence the delay. In the circumstance therefore, the period between the grant of an extension of time and 27th November 2018 when the application for leave was being struck out is adequately accounted for.

From there, the delay is justified on prosecution of Misc. Application No. 128/2018. This was an application for enlargement of time to apply for leave to appeal to the Court of Appeal. The deposition in paragraph 9 is that it was filed on 14th March 2019. That cannot be possible if the application was registered in 2018. There could be somewhere wrong in between the year of registration and of filing the application.

The facts in the affidavit however suggest that, the application in question was lodged subsequent to the ruling striking out of the application for leave. That was in November 2018. As a matter of common sense therefore, the application in question was filed in 2019 and not 2018. Counting from November 2018 when the earlier application for leave was struck out, there is an interval of more than three months which has not been justified in the affidavit. As that is not enough, the application in question was, according to paragraph 10 of the affidavit, withdrawn on 24th February 2020. This application was filed on 15th April 2020. Again, there is a difference of more than 50 days which have been accounted for.

In the final result and for the foregoing reasons therefore, the application is devoid of any merit. It is accordingly dismissed with costs.

It is so ordered.



I. MAIGE

JUDGE

16/04/2020

Date 16/04/2021

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

For the Applicant: Mr. Francisco Bantu, Advocate holding brief for Mr.
Jackson Liwera, Advocate

For the Respondent: Mr. Omar Abubakar, Advocate

RMA: Bukuku

COURT:

Ruling delivered this 16th day of April, 2021 in the presence of the learned
counsels of both parties.




S.H. Simfukwe
DEPUTY REGISTRAR
16/04/2021

**MAHAKAMA KUU YA TANZANIA
(DIVISHENI YA ARDHI)**

MISC. LAND APPLICATION NO. 195/2020

*(Yanatokana na Rufaa Na. 84 ya 2015 mbele ya Mheshimiwa Jaji Wambura, J. ya
05/08/2016)*

BAHATI NOVA..... 1. MUOMBAJI
MR. MACHELA..... 2. MUOMBAJI
DHIDI YA
TUNU ABDALLAH MGENI.....MJIBU MAOMBI

MUHTASARI WA MAAMUZI MADOGO

I. MAIGE, J

Haya ni maombi ya kuongezewa muda ili kuomba ruhusa ya mahakama hii ili kuomba rufaa katika mahakama ya rufaa, ni baada ya warufani kutoridhika na uamuzi wa mahakama hii uliotolewa 05/08/2016. Awali warufani walipewa nyongeza ya muda wa siku 14 kutoka 05/05/2017 ili kuwasilisha maombi yao na hakuweza kufanya hivyo, badala yake baada ya muda waliopewa kuisha pasipo amri yoyote ya mahakama warufani waliamua kuwasilisha maombi ya kuomba ruhusa ya mahakama kuomba rufaa katika mahakama ya rufani, maombi ambayo yalitupiliwa mbali na mahakama hii mbele ya Mheshimiwa Jaji De- Melo 27/11/2018. Na sasa warufani wameomba tena kwa mara ya pili.

Mahakama baada ya kusikiliza pande zote ilitupilia mbali maombi ya warufani kwa sababu zifuatazo:-

1. Warufani hawakuweza kutoa sababu yoyote ya msingi kwa kuthibitisha kuchelewa kwao.
2. Pamoja na mrufani wa pili kudai kuwa hakisikilizwa baada ya shauri kusikilizwa upande mmoja, hata tukichukulia hoja hiyo ni ya kweli bado haitawasaidia waombaji kwa sababu nafuu iliyopo kwa mtu ambaye shauri lilisikilizwa kwa upnde mmoja ni kuleta

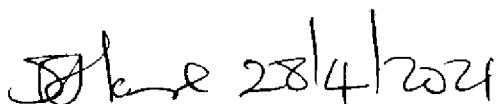
maombi ya kutengua uamuzi huo wa upande mmoja na sio kukata rufaa. Rufaa ni kupinga kilichomo kwenye hukumu/uamuzi inayokatiwa/unaokatiwa rufaa.

3. Baada ya sababu za waleta maombi kushindwa katika maamuzi ya awali, haikutegemewa warufani kuleta maombi yale yale hapa mahakamani kama hivi.
4. Pamoja na waleta maombi kudai kuwa walikuwa wanashughulika na shauri Na. 389 ya 2017 na kwamba maombi yaliwasilishwa mahakamani 18/05/2017 na ni kweli kumbukumbu zinaonesha hivyo, lakini bado muda ulikuwa umepita mwingi toka nyongeza ya muda ilipotolewa na siku maombi yalipotupiliwa mbali 27/11/2018.
5. Halikadhalika katika maombi yaliyofuatia inaonekana yaliwasilishwa 2019 na sio 2018, na ukihesabu toka maombi ya awali yalipofutwa na haya mapya kufunguliwa kuna ucheleweshwaji usio na sababu wa Zaidi ya miezi mitatu.
6. Kana kwamba haitoshi baada ya maombi ya tarehe 24/02/2020 kuondolewa, bado maombi haya ya sasa yanaonekana kuchelewa kwa takribani siku hamsini.

**Muhtasari huu umetolewa na,
Ofisi ya Naibu Msajili Mfawidhi wa Mahakama Kuu Divisheni ya
Ardhi**

Angalizo

1. Lengo la Muhtasari huu ni kusaidia kuelezea maamuzi ya Mahakama katika lugha rahisi ya Kiswahili.
2. Muhtasari huu ni kwa ajili ya taarifa tu na hivyo hauna nguvu ya kisheria
3. Uamuzi kamili wenye nguvu ya kisheria unapatikana katika tovuti ;
<https://tanzlii.org/tz/judgments>.

 28/4/2024