

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 712 OF 2020

**EL NASR EXPORT & IMPORT CO. LTD.....APPLICANT
VERSUS
BAY INVESTMENT LTD.....RESPONDENT**

Date of Last Order:21/06/2021

Date of Ruling:29/06/2021

R U L I N G

MWENDA, J:

This application is filed seeking leave of this court for extension of time for the applicant to lodge a Notice of Appeal to the Court of Appeal of Tanzania out of time and for extension of time for the applicant to file an Application for Leave to Appeal to the Court of Appeal out of time against the Judgment and Decree of Land Case No. 39 Of 2018, High Court of Tanzania [Land Division] at Dar Es Salaam, dated 28th September 2018.

In support of this application the affidavit of *Shehzada Walli* was affirmed and for the Respondent a counter Affidavit of *Fouad Mustafa Martis* was also affirmed. During hearing of this application, the applicant enjoyed the services of Messrs. Malik and Marcely, the learned advocates while the respondent enjoyed the services of Mr. Mosha, learned Advocate.

Briefly the facts of the matter giving rise to this application are that the Respondent **Bay Investment Limited** Filed a Land Case No. 39 of 2018 against the applicant **El Nasr Export and Import Co. LTD** in the High Court of Tanzania (Land Division) for unlawful and unjustifiable breach of terms of joint Venture Agreement. In the said contract the parties agreed that the plaintiff would perform all constructions and development of a commercial building on the leasehold owned by the defendant in a plot No. 747/39 Samora Avenue with title no.687 thereafter numbered no. 186020/12 within Ilala Municipality. Also, the plaintiff would transfer one and a half floor to the defendant. On the other hand, the defendant was to hand over the title deed of the said plot to the plaintiff for commencement of construction task as agreed upon and to exclusively deal with the plaintiff regarding leasehold.

Having concluded the said agreement, the plaintiff fulfilled his obligations under the joint venture agreement but the defendant was in default. The plaintiff sued the defendant for declaratory orders against him that his act is illegal, for specific performance of the signed-agreement, penalty of 200,000=USD, specific damages amounting to 120,000=USD, Interest of 2% and any other reliefs the honourable court would deem fit and just to grant.

When the said case came before the court for mention the defendant admitted every plaintiff's claim as appearing in the plaint annexed to the Applicant's Affidavit. The Judgment on admission was then entered on 28/09/2019 and a decree was issued to that effect.

On 10th December 2020 the applicant filed this application seeking extension of time to lodge notice of appeal to the Court of Appeal of

Tanzania out of time and for extension of time to file an application for leave to appeal to the Court of Appeal against the judgment and Decree of this Court in in Land Case No.39 of 2018 dated 28/09/2018.

During submission in chief the Mr. Malik, learned counsel for the applicant stated that this application is brought under Rule 10 of the Court of Appeal Rules and therefore this court may extend time to appeal if good cause is demonstrated. He cited the case of **Ngao Godwin Losero Vs. Julius Mwarabu, Civil Application No. 10 of 2015** which made reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of young Christia Women's Association of Tanzania ,Civil Application No. 2 of 2010** in which the court reiterated the following guideline for the grant of extension of time:-

- 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 and*

(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.

Further, the learned Advocate averred that if the court feels the applicant have failed to explain the delay then other reasons such as illegality must be considered. At this point he asserted that the judgment and decree of High Court of Tanzania (Land Division) in Land Case no. 39 of 2018 is illegal for want of jurisdiction. He advanced reasons in that the

agreement signed between the parties and reliefs prayed in the plaint are purely commercial matters which can only be dealt with by a commercial court or any other ordinary court. He added that the illegality in this matter is a want of jurisdiction and for that matter it is a good cause for grant extension of time to appeal.

Responding to the submission by the Advocate for Applicant Mr. Moshu, learned Advocate for the respondent asserted that the applicant's application is hopelessly out of time as he has delayed to lodge his appeal for about 3years since the consent judgment was entered. Under this circumstance the applicant is required to advance sufficient reasons and account for each and every day of delay. In support of his argument the learned advocate cited the case of **Zito Zuberi Kabwe & 2 others vs. Hon. Attorney General, Civil Application No. 365/01 of 2019.**

On allegation by applicants that the judgment and Decree are illegal for want of jurisdiction of the court, the learned Advocate for the Respondent Submitted that the general purpose of Joint Venture agreement was to erect a building at Plot No. 747/39 Samora – Avenue therefore the subject matter was a plot of land and the root of controversy was breach of contract of which the subject matter was plot of land. Also, he added that reliefs of specific performance sought was to enable the respondent to undertake the development of landed property and therefore this is a land matter. He then prayed this application to be dismissed with costs.

In this matter the issues for determination are as follows :-

- i. *Whether or not the High court Land Division had jurisdiction to handle and determine Land Case No. 39 of 2018;*

- ii. *Whether or not there are good cause to warrant grant of extension of time to appeal to the court of appeal.*

In the first issue it is clear from the records that the respondent sued the applicant in Land Case No.39 of 2018 Following respondents breach of the Joint venture agreements signed between them. The content of the plaint annexed to the affidavit reveal what type of the agreement did the parties enter. This court went through the plaint and specifically paragraph 9 which reads and I quote:-

9. "That immediately after the parties signing and executing the foresaid Deed of agreement the plaintiff incurred several expenses in complying with inserted conditions of the said agreement such as fees for legal services, purchasing and transporting building materials from abroad and others within the country, costs for consignment and custom charges, **regardless to the said incurred cost but six months expired and the defendant without any probable cause denied handing over title deed to the plaintiff for commencement of construction task agreed upon**"(emphasis added)

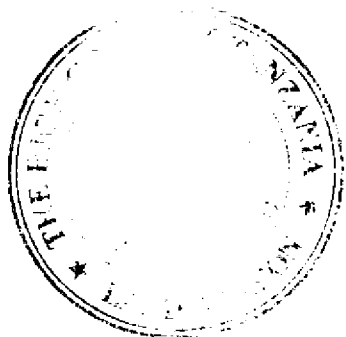
From this paragraph it is evident that one of the defendant's obligation was to hand over the title deed of plot No. 747/39 Samora Avenue with title no.687 thereafter numbered no. 186020/12. Handing over of the title deed entails transfer and/or an issue of ownership of the same and as such it falls under the jurisdiction of this Court.


Also going through reliefs sought by the plaintiff in Paragraph 13(i) and (ii) to wit a declaration that the act of defendant is illegal and for an order of specific performance of the signed Memorandum of understanding clearly indicate that they are referring to the handing over of the Title deed which is a purely land matter falling under the jurisdiction of this court.

On the issue as to Whether or not there are good cause to warrant grant of extension of time to appeal to the court of appeal the applicant did not explain why he delayed to lodge his appeal timely. The applicant in his submission cited the case of **Ngao Godwin Losero Vs. Julius Mwarabu, Civil Application No. 10 of 2015** which made reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of young Christian Women's Association of Tanzania, Civil Application No. 2 of 2010** in which guidelines for grant of extension of time were mentioned. He however has failed to account for each and every day of delay.

From the foregoing reasons this application fails and is accordingly dismissed with costs.

It is so ordered.




A. Y. MWENDA
JUDGE
29/6/2020