

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 376 OF 2022

(Arising from the decision of the High Court of Tanzania (Land Division) at Dar es Salaam in Land Application No. 716 of 2021 Hon. Mgeyekwa, J.)

MUHSIN RAMADHANI SALIM.....APPLICANT

VERSUS

HOSSEIN HAJI.....1ST RESPONDENT

MSTILI HOSSENI.....2ND RESPONDENT

RULING

29/11/2022 & 06/12/2022

A. MSAFIRI, J.

The above named applicant lodged the present application under Section 14 (1) of the Law of Limitation Act [CAP 89 R.E 2019] (the LLA), seeking for the following reliefs namely;

- 1. That this Honourable Court be pleased to extend time within which to file an application for review of the ruling and order of this Honourable Court in Misc. Application 716 of 2021 delivered by Hon. A. Z. Mgeyekwa, J.*
- 2. That this Honourable Court be pleased to extend time within which the applicant can effect service of notice of appeal filed on 16th November 2021 and letter dated 11th November 2021 requesting for the copy of* *Adls-*

judgment in respect of Land Appeal No. 271/2019 to the respondents out of time.

- 3. Costs of the Application be borne by the respondents and*
- 4. Any other order (s) as the Honourable Court may deem fit and just to grant.*

The application has been taken at the instance of the applicant and it is supported by an affidavit affirmed by the applicant himself.

When the application was called on for hearing on 29th November 2022, the applicant and the 1st respondent appeared in person they had no legal representation while the 2nd respondent did not enter appearance. The application was disposed of orally.

The applicant adopted the affidavit in support of the application and prayed for the court to grant the application.

On reply, the 1st respondent opposed the application and he submitted that it has been 8 years now since parties have been in courts and the applicant has been filing endless cases in this court. He submitted that there are no sufficient reasons advanced by the applicant to have the application granted hence he prayed for the same to be dismissed with costs.

On rejoinder, the applicant submitted that he has a right to appeal if aggrieved by the decision of the lower court/Tribunal hence he reiterated his stance that the application should be granted.

Adle.

Having gone through the parties' submissions rival and in opposition to the application at hand the sole issue calling for the court's determination is whether the application has merits.

As clearly seen above there are two substantive prayers advanced by the applicant. One is for extension of time to file review and the second is for extension of time to serve the respondents with a letter requesting for copies of judgment in respect of Land Appeal No. 271 of 2019.

In determining the merits or demerits of the application, there are two substantive prayers on the application. Each will be determined separately.

I propose to begin with the second substantive relief in which the applicant is seeking for extension of time to serve the respondents with the notice of appeal and a letter requesting for copies of judgment and decree out of time. According to the affidavit by the applicant, he made efforts to serve the respondents with the said documents through the Village Chairman however efforts ended in vain as the 1st respondent received the documents but refused to acknowledge by signing. On the other hand, the 2nd respondent was nowhere to be seen as he was no longer living at Miono Village where he had his residence.

The applicant has attached the affidavit from the Village Chairman to substantiate his claims.

In determining the second relief sought by the applicant, I ask myself whether the court can grant it. The applicant prays for extension of time to serve the respondents with both notice of appeal as well as letter requesting

Alle.

for the copies of judgment and proceedings. In terms of Rule 84 (1) of the Court of Appeal Rules 2019 (the Rules), once the appellant has lodged his notice of intention to appeal to the Court of Appeal he is required to serve the same to the respondent and any other person seems to be directly affected by the appeal within 14 days after lodging the notice.

On the other hand service of a letter requesting for copies of judgment and proceedings where a person intends to appeal to the Court of Appeal is governed by Rule 90 of the Rules. In terms of Rule 90, the letter requesting for copies of judgment and proceedings is required to be served to the respondent. For whatever reason if the appellant fails to effect service of either the notice of appeal or letter requesting for copies judgment and proceedings he is required to seek an extension of time to serve the said notice and the letter.

The question is where that application for extension of time is made? Since service of the copy of notice of appeal and letter requesting for the copies of proceedings is governed by the Rules this court lacks jurisdiction to grant such prayer as it is an exclusive domain of the Court of Appeal. I am much aware that this Court and the Court of Appeal have concurrent jurisdiction on a few aspects such as application for leave but service of notice or a letter requesting copies of judgment and proceedings is not one of the aspects which this court enjoys jurisdiction concurrently with the Court of Appeal. Hence the applicant was required to seek an extension of time under Rule 10 of the Rules before the Court of Appeal and not before this Court. *Alle*

Hence it is for that reason I hold that the second relief is not properly before this court and Section 14 (1) of LLA is inapplicable in the circumstance. Therefore, I proceed to strike out the second relief.

Let me now turn to the first relief in which the applicant is seeking for extension of time to file review against the decision of this court. The decision sought to be reviewed arises from Land Application No. 716 of 2021 in which the applicant was seeking for leave to appeal to the Court of Appeal but the said met with a preliminary objection to the effect that the said application was time barred. Consequently, the application was dismissed in terms of Section 3 of the LLA on 15th February 2022.

The applicant is seeking for extension of time to file review the decision dismissing his application for leave after expiry of about **five (5) months**. This application has been preferred under Section 14 (1) of the LLA. The said provision empowers the court to grant and extension of time upon reasonable or sufficient cause.

However, what constitutes good cause has not been codified although, in various instances, a number of factors to be considered to constitute good and sufficient cause. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant. (See for instance the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001, **Tauka Theodory Ferdinand v. Eva Zakayo Mwita (As Administratrix of the Estate of the Late Aibanus Mwita)** and **Wambura N. J. Waryuba v. The Principal Secretary, Ministry of**

Finance and Another, Civil Application No. 225/01 of 2019 (all unreported).

The applicant was mandatorily required to account for each day of the delay as stated above. But in the instant application the applicant did not account for each day of delay from the date of ruling in respect of application No. 716 of 2021 to the date he lodged the present application on 12th July 2022.

The applicant has alleged existence of illegality because the court dismissed the application instead of striking it out. I am very much aware that where there is an allegation of illegality the same is sufficient ground for extension of time regardless of whether the applicant has accounted on each day of delay.

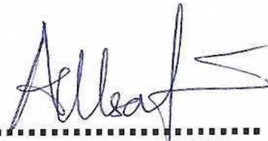
But in order to constitute illegality, it must be apparent on the face of the record such as the question of jurisdiction, not one that would be discovered by long drawn argument or process. This position of law has been restated in a number of cases including; **The Principal Secretary, Ministry of Defence And National Service v Devram P. Valambhia** [1992] T.L.R387, **Lyamuya Construction v Board Of Young Women Christians Association**, Civil Application No. 2 Of 2010 (Unreported).

In the instant application, the applicant alleges that by dismissing the application the court is contrary to the existing law made through the decisions of this Honourable Court and the Court of Appeal. Unfortunately, the applicant could not supply the court any of the said decisions to substantiate his claims. Therefore, in absence of any of the authorities *Allo.*

referred by the applicant this court cannot do a guess work. Whether or not the court in dismissing the application instead of striking it out is to be determined through long drawn argument. I hasten to grant the 1st relief sought by the applicant.

In upshot and foregoing the application is determined with an order striking out the 2nd relief and dismissing the 1st relief. In the event I will make no order as costs.

It is so ordered.



A. MSAFIRI,

JUDGE

06/12/2022

