

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 142 OF 2022

(Arising from Complaint No. 22 of 2010)

HAMISI R. MANG'ANDO..... 1ST APPLICANT
VINCENT MNUNKA 2ND APPLICANT
AMIR SHABANI 3RD APPLICANT
ASII RAMADHANI..... 4TH APPLICANT
JOSEPH MATOZI..... 5TH APPLICANT
DICKSON MHANDO 6TH APPLICANT

VERSUS

JESSIE MNGUTO,
LIQUIDATOR TANZANIA SISAL AUTHORITY..... 1ST RESPONDENT
TREASURY REGISTRAR 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT
PROFESSOR ANGELO MAPUNDA,
LIQUIDATOR OF KATANI LIMITED..... 4TH RESPONDENT
TANZANIA SISAL BOA..... 5TH RESPONDENT

RULING

K.T.R Mteule, J

01st December 2022 & 13th December 2022

The applicants are seeking for extension of time to file an application to set aside the dismissal order of complaint No. 22 of 2010 dated 18th November 2011. It is deponed by the applicants in their affidavits that

the complaint was lodged by Mr. Yahaya Mango who was their representative by that time who later passed away on 15th January 2012. It is deponed further that, after the death of their representative, the Applicants discovered that their complaint was dismissed in 2011 for want of prosecution. That they started to seek for extension of time to file an application to set aside the dismissal order without success due to technicalities caused by a confusion as to which court should the complaint be lodged between Tanga where the Applicants reside and Dar es Salaam where their complaint was filed and dismissed.

It appears that from 2012 when the impugned application was dismissed, several applications were lodged unsuccessfully. At least on 14/6/2016 they succeeded to secure extension of time to file application to set aside dismissal order. The said application for setting aside the dismissal order was filed timely but in Tanga subregistry. On 27/5/2020 the said application was struck out for being filed in wrong registry. They filed another application in Dar es salaam which was struck out on 3/12/2021. On 26th May 2022 they lodged this application seeking for extension of time. The Application was heard by a way of Written Submissions where the Applicants were represented by Mr. Jethro

Turyamwesiga, the 1st Respondent present in person, the 2nd, 3rd and 5th Respondents by Elias Evelius Mwendwa, State Attorney.

In their affidavits and written submissions, the reasons advanced by the Applicants for the delay included technicalities they encountered in the process of lodging the application and the death of their representative the late Yahaya Mango. They advanced another reason of illegalities by which the dismissal order is alleged to be tainted with, as the matter was dismissed by a deputy registrar. They cited the case of **TANESCO versus Mufungo Majura and 15 Others, Civil Application No. 94 of 2016**, Court of Appeal of Tanzania, pages 14 and 15 which held illegality as a ground to extend time.

In reply, the first Applicant submitted that the death of the representative is immaterial because the surviving applicants should have made follow-up to the matter before it was dismissed for want of prosecution pursuant to **Order XXII Rule 2 of the Civil Procedure Code, Cap 33 of 2019**. She challenged the applicant's failure to appear in court even to inform about the death of their representative.

The 1st Applicant challenged the reasons of technicalities advanced by the applicants. According to her, the applicants had duty to make diligence to ensure they lodge their application in the same court in

which they lodged their complaint. She cited the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 Of 2010, CAT** where the court held that:-

"the applicants must show due diligence and not apathy, negligence or sloppiness in the prosecution of action that he intends to take."

The 1st Applicant added that the applicants have not accounted all the days of delay as per the case of **Wambele Mtumwa versus Mohamed Hamis, Civil Reference No. 8 of 2016** where the Court cited with approval the case of **Bushiri Hassan versus Latifa Mashayo, Civil Application No. 3 of 2007** page 9 where the court held that:-

"Delay even of a single day has to be accounted for; otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

On the part of the 2nd, 3rd and 5th Respondents, Mr. Mwendwa referred to the guidelines provided in **Lyamuya's case** cited supra by the 1st respondent. He enumerated the guides to include:-

- (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 the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

He further cited the case of **Ludger Bernard Nyoni versus National Housing Corporation, Civil Application No. 372/01/2018 CAT (Unreported)** where the Court of Appeal emphasised that in application for enlargement of time, the applicant must account for every day of delay involved and that the failure to do so would result in the dismissal of the application. He cited another case of **Tanga Cement Company Limited versus Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No 6 of 2001, CAT** where the court added the factors to be considered in enlarging time to include whether or not the application is brought promptly, absence of any valid explanation for delay and lack of diligence.

According to Mr. Mwendwa, the applicants have not demonstrated any sufficient cause of the delay other than narrating what happened in court in various occasions.

Mr. Mwendwa refuted existence of any illegality in the impugned order. According to him, the matter which was dismissed by the Deputy Registrar was an application for execution which was within the power of the deputy registrar, and she exercised her jurisdiction under **Order XLIII Rule 1 of the Civil Procedure Code, Cap 33 of 2019 R.E.**

Submitting on the accounting of all the days of delay, Mr. Mwendwa stated that such an account is not sufficiently done. He noted the days not accounted in the many applications said to have been filed by the applicants. He specifically addressed one scenario concerning their last application registered as **Misc. Application No. 514 of 2020** which was struck out before Maghimbi, J for being incompetent. According to Mr. Mwendwa, the Application was struck out on **3rd December 2021** and the Applicants lodged this application for extension of time on **9th May 2022** which in his computation brought 5 months delay which is not accounted for.

Mr. Mwendwa submitted that even if technical delay would be assumed, still the 5 months needs to be accounted for, in each day of delay as per **Lyamuya Construction supra**.

It is the submission of Mr. Mwendwa that the Applicants were negligent which resulted being out of time.

I have gone through the submission from both sides. I agree with the parties submissions on the factors to be considered by the court in exercising it's jurisdiction to enlarge time. These factors have been set out in various jurisprudence including all the cases cited by the parties which are **TANESCO versus Mufungo Majura and 15 Others; Lyamuya Construction supra; Wambele Mtumwa versus Mohamed Hamis supra; Bushiri Hassan versus Latifa Mashayo supra; Ludger Bernard Nyoni versus National Housing Corporation supra and Tanga Cement Company Limited supra**.

The reasons advanced by the Applicants for the delay are mainly based on technical delay. It is true a number of applications has been paraded by the applicants to show that they have been in court for long to pursue the matter since 2012 when they discovered the dismissal of their complaint. In my view, for technical reasons to stand, the applicant's must also show that they were not negligent. They must

show diligence in taking court action by accounting all the days. Accounting all the days include demonstrating how diligent were they, while revolving around those technical issues.

I agree with Mr. Mwendwa that the lapse of 5 months reckoned from December 2021 which is the date when the last application was dismissed to 26th May 2022 which is the date when the applicants lodged this application without any action to pursue the matter in court indicates lack of diligence on the part of the applicants. In their affidavit, this time is not accounted for by the Applicants. It is not even explained. I therefore hold that the applicants do not have sufficient explanation as to why they delayed to lodge the application.

I have further considered the point of illegality. It established that illegality must be apparent on the face of the record. Stating that the registrar did not have power to determine the matter needed more explanation so that it can be seen to be an illegality on the face of it, without long drawn arguments to ascertain it. I could not see such explanation to make the power of the registrar an apparent illegality in the matter.

Taking into account that the delay is inordinate due to the fact that the impugned decision was issued since 2012 which is more than ten year

ago, more tangible reasons should have been adduced by the Applicants to justify the extension of time. As such, I hold that the applicants have not established sufficient grounds to justify grant of extension of time. The application is dismissed for want of merit. It is so ordered.

Dated at Dar es Salaam this 13th Day of December 2022.



KATARINA REVOCATI MTEULE

JUDGE

13/12/2022

