

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 176 OF 2023

(Arising from the Ruling and Order of Hon. D.R. Lyimo, Deputy Registrar (as he then was) dated 02/11/2017 in Execution No. 333 of 2015 at Dar es Salaam)

ATHUMANI KUNGUBAYA & 428 OTHERSAPPLICANT

VERSUS

TANZANIA TELECOMMUNICATIONS CO. LIMITED 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

*Date of last order: 17/07/2023
Date of Ruling: 11/08/2023*

B. E. K. Mganga, J.

On 21st June 2023 Athumani Kungubaya and 428 others, the above-mentioned applicants, filed this application seeking extension of time within which to file leave to call for records and review the ruling and order of Hon. D.R. Lyimo, Deputy Registrar dated 02nd November 2017 in Execution No. 333 of 2015. In support of the Notice of application, applicants filed the affidavit sworn by Reynold Faustini Hungu on behalf of others. In the said affidavit, the deponent indicated that they filed several applications in court but the same were struck out

for being incompetent. He also indicated that, after several miscellaneous applications were struck out, they wrote a letter to the Minister for Constitutional and Legal Affairs seeking his help to extend time within which to file an application for execution. Not only that, but also, he stated that applicants entrusted Horace Mpita and Peter Mkongo to make follow up of their application but the two, without authorization, filed an application excluding the rest of the applicants.

In resisting the application, respondents filed the counter affidavit sworn by Alphonse Edward Alphonse, their Human Resource Officer.

When the application was called on for hearing, Ms. Magreth Maggebo, learned Advocate, appeared and argued for and on behalf of the applicants, while Ms. Adelaida Masaua and Emmanuel Mkonyi, learned State Attorneys, appeared and argued for and on behalf of the respondents.

Arguing the application on behalf of the applicants, Ms. Maggebo, learned counsel submitted that applicants have filed this application for extension of time within which to file an application for Review. She added that, if the application will be granted, applicants will file an application so that the Court can review the decision of Hon. Deputy Registrar Lyimo, dated 02nd November 2017 in Execution No. 333 of

2015. Counsel submitted further that, in Execution No. 333 of 2015 applicants were 482 but, in this application, they are 428. She added that, on 20th October 2022 this Court appointed Reynold Faustini Hungu to represent 481 others.

Counsel submitted further that, on 30th July 1999, the Industrial Court awarded applicants to be reinstated and others to be paid the difference of the amount that were paid. She went on that, respondents filed a revision but, on 26th July 2000 the same was dismissed by Hon. E.L.K. Mwaipopo, J (as he then was) for want of prosecution. She added that, respondent filed an application to set aside dismissal order and the said dismissal order was set aside on 19th December 2008 by Hon. J.I. Mlay, J, Hon. R.V. Makaramba, J and Hon. A.C. Nyerere, J (as they then were).

Counsel submitted further that, on 27th October 2017 applicants filed Execution No. 333 of 2015 but on 02nd November 2017 Hon. D.R. Lyimo, Deputy Registrar, dismissed the said execution for being time barred. She submitted further that, on 16th November 2017 applicants filed Revision No. 543 of 2017 but it was struck out on 25th February 2019 with leave to refile within 17 days as it was found to be incompetent for want of representative suit. She added that, on 09th July 2019, applicants filed Revision No. 150 of 2019 that was also struck and

that, thereafter, Horace Mpita and Peter Mkongo who were leaders of the applicants, with collusion with Charles Lugaila, Advocate, tempered and filed Miscellaneous Application No. 387 of 2020 for a representative suit by excluding other applicants and remain only 2 applicants. She went on that, the application that was filed by Horace Mpita and Peter Mkongo in collusion with Charles Lugaila, Advocate was also struck out for want of authorization of the persons to be represented. She added that, thereafter, applicants filed Miscellaneous application No. 178 of 2022 for representative suit as a result, the same was granted by appointing Reynold Faustini Hungu as representative of the applicants.

Ms. Maggebo learned counsel for the applicants submitted further that, after the Court has granted the application for representative suit, applicants filed Miscellaneous Application No. 455 of 2022 for extension of time to file an application for Revision so that the court can revise the award that was issued by the of Industrial Court dated 30th July 1999, but applicants withdrew the said application on 28th March 2023. She went on that, applicants filed this application for extension of time within which to file an application for Review so that the court can review the decision of Hon. D.R. Lyimo, Deputy Registrar that was issued on 02nd November 2017. In her submissions, counsel submitted that, applicants were supposed to file an application for review within 60 days but from

the date of the impugned Ruling, it is now 6 years. On reason for the delay, counsel gave two reasons namely (i) was because applications that were filed by the applicants were struck out and (ii) an advocate for the applicant performed what he was not instructed by the applicants to do and that the said advocate acted unprofessional. In her submissions, counsel for the applicants conceded that there is no affidavit of the advocate who is alleged to have acted unprofessional to support this application.

Learned counsel for the applicants cited Rule 51(1) of the Labour Court Rules, GN. No. 106 of 2007 and submit that the said Rule gives powers to the Court to grant extension of time and that, it requires applicants to show good cause. She further cited the case of **Valerie Mcgivern v. Salim Fakhrudin Dalal**, Civil Application No. 11 of 2015, CAT (unreported) to the position that, good cause depends on circumstances of each case. She maintained that the delay was due to conducts of the Advocate which is a sufficient reason for extension of time and cited the case of **Felix Tumbo Kisima v. TTC Limited & Others** [1997] TLR 57 to support her submissions.

Counsel for the applicants submitted further that, if this application will be granted, respondents will not be prejudiced. She further invited the court to apply the overriding objective principles and grant the

application. In her submissions, counsel conceded that the overriding objective principle did not do away with the requirement of the parties to comply with the law and further that, litigations must come to an end. She maintained that applicants have high chances of success.

In resisting the application, Ms. Masaua, learned State Attorney for the respondents submitted that applicants did not adduced reasons for the delay rather, they have disclosed negligence in handling the matter. She submitted further that; applicants did not account for each day of the delay. She went on that, Horace Mpita and Peter Mkongo are different persons unrelated to the application at hand and that, paragraph 11 of the affidavit that mentions the said Horace Mpita and Peter Mkongo has nothing to do with this application. She added that, there is no list of the applicants to show that the application was filed by 428 applicants.

Learned state Attorney also submitted that there is no technical delay and further that applicants have failed to disclose those circumstances. She argued that applicants have exhibited serious negligent acts because, the Court granted leave to Reynold Faustini Hungu, but the application was filed by Athumani Kungubaya & 428 Others. She added that, the order of the court was for 481 applicants but in the application at hand, applicants are 429 only.

Learned State Attorney further challenged competence of the application submitting that, in the Notice of Application, applicants indicated that the application is for extension of time and review hence it is omnibus. She further argued that, applicants have cited Section 94(1)(b) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] to move the court while the decision of the Deputy Registrar is not reviewable under the said Section. She argued that, applicants were supposed to cite Rule 27 of the Labour Court Rules, GN. No. 106 of 2007 that relates to review of decisions including that of the Deputy Registrar. She concluded by praying the application be struck out for being omnibus. In the alternative, she prayed the application be dismissed for want of merit.

In rejoinder, Ms. Maggebo, learned counsel for the applicants submitted that, the application is not omnibus because it is only for extension of time, which is why, her submissions were on extension of time and not review. She reiterated that Horace Mpita and Peter Mkongo filed the application on behalf of the applicants illegally. She concluded that the application is merited hence should be allowed.

I have considered submissions of the parties in this application. It is clear from submissions by the learned State Attorney on behalf of the respondents that respondents raised preliminary objections relating to

competence of this application. I will therefore, for obvious reason, consider first submissions relating to competence of this application before considering the merit of the application itself.

It was submitted by counsel for the respondents that the application is omnibus. To appreciate whether the application is omnibus or not, I have examined the Notice of Application and the affidavit in support thereof and considered submissions made thereto in totality.

The Notice of Application reads as hereunder: -

- " 1. That the Honorable Court be pleased to grant an Extension of time to file leave to call for records in relation to execution no (sic) 333 of 2015 and be pleased review(sic) the ruling and order of Hon. D.R Lymo Deputy Registrar dated 2nd November 2017, that, the execution application by the applicant here (sic) in relation to the award of the industrial Court, Trade dispute No. 57 of 1997 dated 30/7/1999.*
- 2. Costs of the Application be provided for and*
- 3. Any other relief(s) that this Honourable Court may deem fit and just to grant."*

From the above quoted paragraph extracted from the Notice of Application, I have noted that, there is poor choice of words by the applicants in drafting the Notice of Application. It is my opinion that, the affidavit and submissions made on behalf of the applicants relates to the application for extension of time so that they can file an application for Review of the Ruling and order issued by Hon. D.R. Lyimo, Deputy

Registra in Execution No. 333 of 2015. The above quoted Notice of Application and the prayers in the affidavit filed by Reymond Faustini Hungu, seemingly, suggest that the application is both for extension of time and review. But, on careful consideration, I am of the considered opinion that, the application is for extension of time only because, in the affidavit in support of the Notice of Application, nothing was stated relating to review. More so, nothing was submitted by counsel for the applicants relating to review. I therefore conclude that, the application is not omnibus rather, the Notice of Application was not properly drafted. That alone, in my view, cannot be a ground for striking out this application.

The learned State Attorney submitted that applicants have improperly moved the court by citing section 94(1)(b) of Cap. 366 R.E. 2019(supra) instead of Rule 27 of GN. No. 106 of 2007. With due respect to the learned State Attorney for the respondent, this is an application for extension of time. It is not an application for review for the applicants to cite Rule 27 of GN. No. 106 of 2007 (supra). In the Notice of Application, applicants cited also Rule 56 of GN. No. 106 of 2007(supra) that relates to extension of time. This court cannot close its eyes and ignore Rule 56 of GN. No. 106 of 2007(supra) that was also cited by the applicants and concentrate only to section 94(1)(b) of Cap.

366 R.E. 2019(supra) also cited in the Notice of Application. I will, therefore, ignore section 94(1)(b) of Cap. 366 R.E. 2019(supra) and assume that it was inadvertently cited and strike it out and leave Rule 56 of GN. No. 106 of 2007(supra). Once that is done, then, the application is properly before the court. In my view, by citing the provisions of Rule 56 of GN. No. 106 of 2007(supra) in the Notice of Application, made the application for extension of time to be properly before the court. I therefore dismiss all preliminary objections raised by the respondent at the time of arguing the application on merit.

The complaint that leave for representative suit was granted by the court to Reymond Faustini Hungu but the application was filed by Athumani Kungubaya cannot waste my time. I should point out that the court granted leave to Reymond Faustini Hungu to file the application on behalf of other applicants meaning that he was authorized to sign documents and file them in court. The said leave did not mean that title of the application must change from Athumani Kungubaya, the name that was used by the parties throughout in the Industrial Court and in this case to the name of Reymond Faustini Hungu. What I can say is that the learned State Attorney misapprehended the nature and extent of leave that was granted to the said Reymond Faustini Hungu. The said leave is dissimilar to the one that always is granted prior to filing a case

in court. In the application at hand, all documents were signed by Reymond Faustini Hungu. In short, the application was properly signed. I therefore dismiss all preliminary objections that was raised by the learned State Attorney during submission on merit of the application.

Now, turning to the merits of the application. It is undisputed by the parties that, applicants are seeking extension of time to file an application for review so that the court can review the Ruling and order that was issued on 2nd November 2017. This being an application for extension of time, the court is being asked to exercise its discretion, of course, that must be done judiciously meaning that the decision must be based on what is fair, under the circumstances and guided by the rules and principles of law. See the case of [Mza RTC Trading Company Limited vs Export Trading Company Limited](#), Civil Application No.12 of 2015 [2016] TZCA 12. In order for the court to exercise its discretion, applicant(s) must provide sufficient reason for the delay or provide relevant materials and circumstances justifying the grant of the application as it was held by the Court of Appeal in the case of [Victoria Real Estate Development Ltd vs Tanzania Investment Bank & Others](#) (Civil Application 225 of 2014) [2015] TZCA 354, [Rose Irene Mbwete vs Phoebe Martin Kyomo](#) (Civil Application 70 of 2019) [2023] TZCA 111, [Omary Shaban Nyambu vs Dodoma Water &](#)

Sewarage Authority (Civil Application 146 of 2016) [2016] TZCA 892, and ***Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd***, Civil Application No. 13 of 2010, CAT(unreported) to mention but a few. In addition to the foregoing, it is a settled principle of law in our jurisdiction that, in an application for extension of time, applicant must account for each day of the delay. See the case of **Elias Mwakalinga v. Domina Kagaruki and 5 others**, Civil Application No. 120 of 2018 [2019] TZCA 231 and **Airtel Tanzania Limited V. Misterlight Electrical Installation Co. Ltd & Another**, Civil Application No. 37 of 2020[2021]TZCA 517. In fact, even a single day must be accounted for.

In the application at hand, the impugned ruling and order in application for execution No. 333 of 2015 that the said execution was time barred, was delivered on 2nd November 2017. Reasons advanced by the applicants for the delay of filing an application for review are that, they filed several applications that were struck out for being incompetent. In paragraph 7 of the affidavit in support of the application, the deponent stated that applicants filed an application for execution, but later respondents filed Revision No. 57 of 1997 that was dismissed for want of prosecution. It is worth to note that, in the affidavit in support of the application, applicants did not disclose the number of the said execution and the date they filed the said execution

the said execution prior to the respondents filing revision No. 57 of 1977.

In paragraph 8 of the affidavit in support of the application, the deponent stated that, while execution was pending in court, respondents filed Miscellaneous Appeal No. 3 of 2008 to set aside the dismissal order. I have read the copy of the judgment attached to the affidavit in support of the application as AK4 and find that, the said judgment has nothing to do with the application by Athuman Kungubaya and 482 Others who were awarded by the Industrial Court of Tanzania on 30th July 1999, namely, the herein applicants. The parties in the judgment of this court in miscellaneous appeal No. 3 of 2008 are ***Tanzania Telecommunications Ltd and Consolidated Holding Corporation vs Boniphace Mjenjwa and 13 Others Ex-OTTU Members*** as appellants and respondents respectively. But that is a mere historical background to the application at hand.

In paragraph 9 of the affidavit in support of the Notice of Application, the deponent stated that, the decision that was awarded applicants TZS 18, 161,182,863.00 on 30th July 1999 and that of Hon. S.A.N. Wambura J, delivered on 26th June 2006, remained intact that applicants are entitled to be paid the said amount. That, based on the

said award and judgment, applicants filed execution No. 333 of 2015 that was dismissed for being time barred. In paragraph 10, the deponent stated that, after the said dismissal of execution No. 333 of 2015, applicants filed Revision No. 543 of 2017 but it was struck out by Hon. S.A.N. Wambura, J for lack of representative suit and were given seven days to refile. It is worth to point out that, the deponent did neither state the date applicants filed the said Revision application No. 543 of 2017 nor the date it was struck out. More so, a copy of the order or ruling striking out Revision No. 543 of 2017 was not attached to the affidavit in support of this application. In my view, it was crucial for the applicants to disclose those dates for the court to gauge whether, applicants acted promptly after dismissal of execution No. 333 of 2015, the subject of this application, for being time barred or not.

It was deponed further in paragraph 10 of the said affidavit that, on 9th July 2019 applicants filed Revision 150 of 2019 but the said revision was also struck out by this court (Hon. S.A.N. Wambura, J (as she then was. Again, applicants have failed to disclose the date the said Revision No. 150 of 2019 was struck out. From where I am standing, it cannot be established as to when, the said revision No. 150 of 2019 was struck out because the copy of the order or ruling was not attached to the affidavit in support of the application.

In paragraph 11 of the affidavit in support of the application, the deponent stated that, Horace Mpita and Peter Mkongo who were entrusted by the applicants to make follow up of the status of the case, lied to them that the case was decided in favour of the applicants. The deponent stated further that, Horace Mpita and Peter Mkongo, without communicating with the applicants, filed Miscellaneous Application No. 387 of 2020 but the said application was struck out by this court (Hon. I.D. Aboud, J) for lack of proper authorization of the persons the said persons were representing. I should point out that, in the affidavit in support of the application, the deponent did not disclose the date Miscellaneous Application No. 387 of 2020 was filed in court.

During hearing, it was submitted by Ms. Maggebo, learned counsel for the applicants that, Horace Mpita and Peter Mkongo tempered and colluded with Charles Lugaila, Advocate, and filed Miscellaneous Application No. 387 of 2020 for a representative application by excluding other applicants and remain Horace Mpita and Peter Mkongo only as applicants. With due respect to learned counsel for the applicants, those submissions are not supported by evidence in the affidavit in support of this application. There is no even a single sentence in the whole affidavit in support of the application mentioning the name of Charles Lugaila, Advocate or suggesting that the said of Horace Mpita and Peter Mkongo

colluded with an advocate. As such, submissions relating to Charles Lugaila, Advocate or any collusion are from the bar. There is a litany of case laws that submissions from the bar are worthless and cannot be considered by the court as evidence. See the case of [Rosemary Stella Chambejairo vs David Kitundu Jairo](#), Civil Reference 6 of 2018) [2021] TZCA 442, ***Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others***, Civil Appeal No. 147 of 2006, [A. Nkini & Associates Limited vs National Housing Corporation](#), Civil Appeal No.72 of 2015) [2021] TZCA 564, [Shadrack Balinago vs Fikir Mohamed @ Hamza & Others](#), Civil Application No. 25 of 2019 [2021] TZCA 45 to mention but a few. What is clear in paragraph 11 of the affidavit in support of the application is that applicants entrusted the said Horace Mpita and Peter Mkongo to make follow up of the application on their behalf. That has nothing to do with collusion or advocate Charles Lugaila. In fact, it may be like what they did by appointing Reymond Faustini Hungu to be their representative and the later worked closely with Ms. Maggebo to ensure that the matter is filed in court. In my view, the mere fact that the application that was filed by Horace Mpita and Peter Mkongo who were represented in court by Charles Lugaila, advocate failed, cannot be conclusive evidence that there was collusion. It is my opinion that, if any

case decided against the applicants the latter concludes that whoever was far front, colluded with an advocate who was handling the case and that the advocate acted unprofessionally, then, no advocate will be ready to handle cases filed by the applicants. In fact, whatever goes out, goes around and the same will apply to the one handling this application. That is all.

In addition to the foregoing, there is no affidavit by the said Horace Mpita and Peter Mkongo to support what was stated by the deponent in paragraph 11. There is a plethora of decisions by the Court of Appeal that, an affidavit which mentions another person is hearsay unless that other person swears as well. Some of these decisions are *Sabena Technics Dar Limited v. Michael J. Luwunzu*, (Civil Application No. 451 of 2020)[2021] TZCA 108, *Franconia Investments Ltd v. TIB Development Bank Ltd*, (Civil Application No. 270 of 2020 [2021] TZCA 563, ***Benedict Kimwaga v. Principal Secretary Ministry of Health***, Civil Application No. 31 of 200, CAT(unreported), ***NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd***, Civil Application No. 13 of 2002, CAT(unreported) to mention but a few.

In paragraphs 12 and 13 it was deposed that, applicants filed Miscellaneous Application No. 178 of 2022 for extension of time to file a

representative suit and that the said application was granted, as a result, applicants filed Miscellaneous Application No. 378 of 2022 for representative suit. I have noted that Miscellaneous Applications No. 178 of 2022 and 378 of 2022 were granted on 14th September 2022 and 20th October 2022 respectively, by Hon. S.M. Maghimbi, J. It is worth to point out that (i) in the affidavit in support of the application, the deponent did not disclose the dates the two applications were filed in court and (ii) in all applications, applicants were represented by Ms. Magreth Maggebo, learned advocate.

In paragraphs 15 and 16 of the affidavit in support of the application, it was stated that, after Miscellaneous Applications No. 178 of 2022 and 378 of 2022 were granted by the court, applicants wrote a letter to the Hon. Minister for Constitution and Legal Affairs praying time to be extended within which to file an execution application to execute the award that was issued on 30th July 1999 in Labour dispute No. 57 of 1997 and that the Minister turned down the prayer directing applicants to file an application before the court. Applicants attached the letter they sent to the Hon. Minister for Constitution and Legal Affairs and the reply thereto as AK. 10 and AK. 11 respectively. I have a glance of an eye to the letter that was written to the Minister for Constitution and Legal Affairs and find that it was written and signed by Ms. Magreth Maggebo,

learned counsel for the applicants on 12th August 2022. I have also noted that the reply by the Minister (AK 11) was written on 3rd November 2022. What I can say in relation to paragraphs 10 and 11 of the affidavit in support of the application is that, (i) applicants were asking the Hon. Minister for Constitution and Legal Affairs to condone the delay to file execution knowingly that on 2nd November 2017, the executing officer, has already issued a ruling that execution No. 333 of 2015 that was filed by the applicants was time barred, and (ii) that applicants wrote a letter to the Hon. Minister as forum shopping.

In paragraph 14 of the affidavit in support of the application, it was stated that after the court has granted application No. 378 of 2022, applicants filed Miscellaneous application No. 455 of 2022 that was withdrawn after the respondents have raised a preliminary objection. I should point out that, the said Miscellaneous Application as per the order attached to the affidavit in support of the application, was withdrawn on 28th March 2023 by Ms. Magreth Maggebo, learned counsel for the applicants. It is worth also to note that, the affidavit in support of the application did not disclose the date the said Miscellaneous Application No. 455 of 2022 was filed in court.

In paragraph 17 namely the last paragraph in the affidavit in support of the application containing circumstances and reasons for the

delay, it was stated that applicants filed Miscellaneous Application No.128 of 2023 seeking the Court to extend time within which to file an application for revision but withdrew the said application with leave to refile. applicants attached the order of this court (Hon. Y.J. Mlyambina, J) dated 12th June 2023.

During hearing, counsel for the applicants submitted that applicants were supposed to file the application for review within 60 days, but they filed this application after six years. With due respect to counsel for the applicants, in terms of Rule 27(1) of the Labour Court Rules, GN. No. 106 of 2007, applicants were supposed to file a Notice of Review within fifteen (15) days from the date of the decision to be reviewed namely from 2nd November 2017. Applicants delayed to file this application for five years. In the Notice of Application, applicants are praying the court to extend time within which to file Review. There is no evidence in the affidavit in support of the application showing that applicants filed the Notice of review in terms of Rule 27(1) and served it to the respondents in terms of Rule 27(4) of GN. No. 106 of 2007 (supra) for the court to grant the application to file review. I am of that considered opinion because a notice to file review is a precondition before filing review which is why Rule 27(4) of GN. No. 106 of 2007 (supra) requires the said Notice be served to all interested parties and

Rule 27(5) of the same GN. provides its format. More so, it is only after filing the Notice of Review, the Registrar is required, in terms of Rule 27(6) of GN. No. 106 of 2007(supra) to supply a certified copy of the decision sought. Rule 27(7) of GN. No. 106 of 2007(supra) clearly provide that upon receipt of a copy of the decision to be reviewed, applicant shall, within fifteen days, file a concise memorandum of review stating the grounds for review sought. From the foregoing, two scenarios relating to extension of time can happen. One; when applicant fails to file the notice of review within fifteen days provided for under Rule 27(4) of GN. No. 106 of 2007 (supra) can file an application for extension of time within which to file the Notice of review and the review itself. Two; when the applicant filed the Notice of Review within a prescribed time but failed to file the review (memorandum of review) within fifteen days after being supplied with a copy of the decision to be reviewed, can file an application for extension of time within which to file the review meaning the memorandum of review. In the application at hand, as pointed out hereinabove, applicants are praying the court to extend time within which to file review but there is no evidence to prove that they filed the Notice of Review. In absence of that evidence, the application cannot be granted because they have jumped one necessary stage.

It was submitted on behalf of the applicants that; the delay was because (i) applications that were filed by the applicants were struck out and (ii) an advocate for the applicant performed what he was not instructed by the applicants to do hence the said advocate acted unprofessional.

I have explained hereinabove the nature of the applications that were filed by the applicants and reasons that led those applications to be struck out. Those applications, frankly speaking, were not relating to the application for extension of time to file an application for review. I have also pointed out hereinabove that, the affidavit in support of the Notice of Application did not disclose as to when each of the aforementioned Miscellaneous Applications were filed in court by the applicants. As such, there is no evidence to show that applicants acted diligently and that they were not negligent. I am of that view because, for an application for extension of time to be granted, the delay should not be inordinate, applicant(s) must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take as it was held in the case of [Lyamuya Construction Co. Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania](#), Civil Application No. 2 of 2010 [2011] TZCA

4.

It was submitted on behalf of the applicants that Charles Lugaila, Advocate, who was representing the applicants, acted unprofessional hence a good ground for extension of time. That ground cannot be accepted as a ground for extension of time in this application for various reasons namely: -

One; there is no evidence supporting submissions by counsel for the applicants that Charles Lugaila, Advocate who represented Horace Mpita and Peter Mkongo in Miscellaneous Application No.387 of 2020 acted unprofessional. What is clear in the order of this Court (Hon. I.D. Aboud, J) is that, the said advocate conceded that there were irregularities including absence of proper authorization by the persons who were intended to be represented hence making the application incompetence. In my view, that cannot be a proof that the said advocate acted unprofessional. To the contrary, in my view, Charles Lugaila, Advocate, acted professionally by informing the court the shortcomings to the said application and I see nothing wrong in that. It is my considered opinion that, ***Felix Tumbo Kisima's case*** (supra), cited by counsel for the applicants cannot apply in the circumstances of the application at hand because, there is no evidence to prove that the said advocate acted unprofessional.

Two; there is no affidavit of the said Charles Lugaila, Advocate showing that he acted unprofessional. It is my view that, submissions and conclusions by counsel for the applicants that Charles Lugaila, Advocate acted unprofessionally, is condemning the said advocate unheard. The said advocate deserves as of his constitutional right, to be afforded right to be heard. That was only possible for by the applicants to ask the said advocate to file his affidavit to support or refute those allegations.

Three; if what was done by Charles Lugaila, Advocate is unprofessional, then, Ms. Magreth Maggebo, counsel for the applicant cannot escape the same blame because, in some of the applications mentioned hereinabove, she conceded that those applications were incompetent. To add salt on the wound, Ms. Maggebo, learned advocate for the applicants, knowingly that applicants filed execution No. 333 of 2015 and that, there was a ruling by the Deputy Registrar that, the said execution was time barred, wrote a letter to the Minister to condone the delay so that applicants can file an application for execution. In my view, that was inappropriate and unprofessional.

It was submitted by the learned State Attorney for the respondents that applicants did not account for each day of the delay. I agree with those submissions because, in the affidavit in support of the

application, applicants did not account for the delay. Even delays from 12th June 2023 when Miscellaneous Application No. 128 of 2023 was withdrawn by the applicants to 21st June 2023 when this application was filed, was not accounted for. In short, applicants did not provide relevant material sufficient to warrant the court to grant the application and did not account for the delay.

For all what I have discussed hereinabove, I hold that there are no good grounds to warrant this application to be granted. I therefore, dismiss it for want of merit.

Dated at Dar es Salaam on this 11th August 2023.



B. E. K. Mganga
JUDGE

Ruling delivered on 11th August 2023 in chambers in the presence of Magreth Maggebo, Advocate for the Applicants but in the absence of the Respondents.



B. E. K. Mganga
JUDGE