

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

MISC CIVIL APPLICATION NO. 606 OF 2023

(Arising from Civil Case No. 46 of 2019)

GERALD M. MSANGA..... APPLICANT

VERSUS

JIJI SAVINGS AND CREDIT COORPORATIVE

SOCIETY CO LTD.....RESPONDENT

RULING

2nd & 19th April 2024

MKWIZU, J

In the current application, the applicant is seeking for extension of time to be allowed to file revision in respect of the compromise decree by the Temeke District Court in Civil Case No. 46 /2019 of Temeke District Court on 7th February 2020 for the purpose of satisfying itself on illegality correctness, and propriety of that decision. The application is by a chamber summons made under Section 14(1) of Law of Limitations Act, Cap 89, section 79 and 95 of the Civil Procedure Code (Cap 33 R.E 2019) and Section

44 of the Magistrates Courts Act, Cap 11 of 2019 supported by the affidavit by the applicant in which illegality on the impugned decision is deposed as the reason for the sought prayer.

Mr. Muhimbi who appeared for the applicant at the hearing, adopted the affidavit in support of the application as part of his oral submission recording a number of illegalities on the impugned decision as the grounds for the application namely, lack of jurisdiction by the trial court, failure to exhaust internal remedy available and illegality on the deed of settlement. On the issue of jurisdiction, the learned counsel was emphatic that the dispute is a commercial dispute centered on a loan facility of over 40 million Tanzanian Shillings while the statutory pecuniary jurisdiction of the district court on commercial disputes under section 2 and section 40(3) of the MCA is 30 million . He said, the suit was filed on 17/6/2019 a Pecuniary jurisdiction of the district court was still 30 Million Tanzanian Shillings as described in Act No 4 of 2004 impugning the trial magistrate for stripping into an error in determining the matter without jurisdiction. He cited the case of **Finca Tanzania Limited vs Mazembe Investment Co. Ltd**, Civil Appeal No. 278 of 2020(unreported) to buttress his argument.

The counsel for the applicant further submitted that the Cooperative Societies Act and Cooperative Societies Regulations, 2015, GN No 272 of 2015 and Savings and Credit Cooperative Societies Regulations GN No 115/2015 spell negotiation and reconciliation as the means of settlement in case of the dispute between SACCOS members maintaining that the plaintiff instead of taking the stipulated route he resorted to the filing of a commercial dispute contrary to the law. He supported his argument with the decisions in **Asha Idd vs Babati Saccos Limited and TANFIL Consultants (EA) Limited**, Civil Appeal No 30 of 2019 and **Jerome Kessy vs Ardhi University**, Civil Appeal No 352 of 2021(all unreported) pressing for the grant of the application with costs.

Initially, Mr. Mwaseba the counsel for the respondent was in a way opposing the application but he later, among other things came into agreement with the counsel for the applicant that indeed the matter was placed before the court without jurisdiction which is actually an illegality sufficient to warrant the grant of the application for extension of time. He was explicit that suit No 46 of 2019 was filed before the court without jurisdiction because Act No 3 of 2016 is the act that provided for the general pecuniary jurisdiction

of the district court and that is the section used in instituting the case at issue.

Having heard the parties and perused the record of application, the issue for consideration is whether the applicants have demonstrated good cause to justify the application. As stated earlier, the main ground is illegality. The position is, illegality of the decision sought to be challenged constitute sufficient cause for extension of time whereas the court is obliged to extend the time for ascertaining the alleged illegality and take appropriate measure to put the record right, if the allegation is ascertained. See The **Principal Secretary, Ministry of Defence and National Service vs Devram Valambia [1992]** TLR 185 and **Laurent Simon Asenga vs Joseph Magoso & 2 Others**, Civil Application No. 50 of 2016(Unreported) , **VIP Engineering and Marketing Limited & Three Others vs. Citi Bank Tanzania Ltd**, Consolidated Civil Reference 6,7, and 8 of 2006 CA (unreported) and **Kalunga and Company Advocates vs. National Bank of Commerce [2006]** TLR 235, among many others. However, for illegality to be the basis of the grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of

the appellate court. In **Lyamuya Construction Company Limited** {supra}, the Court of Appeal held:

*"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should as of right be granted extension of time if he applies for one. The Court there emphasized that **such point of law must be that 'of sufficient importance'** and, I would add that **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.** "(Emphasis added)*

I have traversed through the records. It is uncontroverted that the parties dispute was over a loan facility granted to the applicant by the respondent, JIJI SAVINGS AND CREDIT COORPORATIVE SOCIETY CO LTD. He defaulted hence a civil suit, commercial in nature for a total amount of 41,979,479/= instituted at the Temeke District court on 17/6/2019. This dispute did not go

to trial. It ended affably by a deed of settlement by the parties registered as a decree of the court by the same Temeke District Court on 7th February 2020, the now challenged decree.

Two points of illegality relied upon by the applicants that is failure to follow the stipulated procedures, and illegality on the deed of settlement are to me too remote to the records to qualify a ground for extension of time. The claimed illegalities are not apparent on the face of record and they would in my view, call for very long drawn procedure, evidence and clarification by the parties to ascertain their existence.

Nevertheless, the first point tapping on the jurisdiction of the court is so apparent. As conceded to by the respondent counsel, Civil case No. 46 of 2019 was filed in court on 17/6/2019 with a claim above the pecuniary jurisdiction of the court. As settled, jurisdiction is a creature of statute and as such, it cannot be assumed or exercised on the basis of likes and dislikes of the parties. That's why the court has in number of occasions insisted that the question of jurisdiction is fundamental in court proceedings such that cannot be assumed or exercised on the basis of likes and dislikes of the parties . That is why in any adjudication the initial question to be determined

is whether or not the court or tribunal is vested with requisite jurisdiction.

See **Commissioner General of Tanzania Revenue Authority Vs. JSC Atomredmetzoloto (ARMZ)**, Consolidated Civil Appeal Nos. 78 and 79 of 2018 (CAT Unreported).

This being the position, I find the point a good and sufficient ground for extending time to let the court address the issue.

Consequently, the application is granted, the applicant to lodge her application for revision within fourteen (14) days from the date of this ruling.

Costs shall follow the event in the intended revision.

Dated at Dar es salaam, this 19th day of April 2024




E.Y. MKWIZU

JUDGE

19/4/2024