

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR-ES-SALAAM SUB-REGISTRY)**

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 254 OF 2023

ANAMIKA AGNIHOTRI 1st APPLICANT

RAHUL GANESHAN MUDALLAR 2nd APPLICANT

ATVANTIC GROUP (T) LIMITED 3rd APPLICANT

VERSUS

AVINASH RAMESHKUMAR GALAN 1st RESPONDENT

KISSHORI MUKESH MAGANLAL 2nd RESPONDENT

(Arising from Civil Cause No. 4 of 2022)

RULING

Date: 04/09/2023 & 13/03/2024

NKWABI, J.:

"Don't count your chickens before they hatch", is an epigraph that should be gnawing the heads of not only the 1st and 2nd applicants as well as the directors of the 3rd applicant but also the respondents. The parties to this application were parties to Civil Cause No. 4 of 2022 which gave rise to this application. In that suit, the parties executed a deed of settlement on 10th March, 2022. A wrong name of the 3rd applicant was entered in the decree extracted therefrom and, in fact, as well as other documents. In that decree, however, the applicants herein were ordered to pay the respondents therein T.shs 700,000,000/= on 6 installments. The applicants, according to the

decree, were to be removed as shareholders and their shares were to be forfeited by the 3rd applicant herein among other orders.

Be that as it may, there was a Miscellaneous Civil Application No. 582 of 2022 filed in this Court which arose from the parent suit to this application. It was lodged by Avinash and Kasshori against the applicants in this application. That application was withdrawn on 10/01/2023. There was another Miscellaneous Civil Application No. 147 of 2023 lodged in this Court which was for rectification of the name of the 3rd applicant in this application. The latter application was decided by this Court on 27th April 2023. On 30th May 2023 this current application was filed by the applicants in a quest of the underneath orders:

1. That, this honourable Court be pleased to order for extension of time within which to file an application for review of the consent judgment dated 16th March 2022.
2. Any other order that this honourable Court may deem fit and just to grant.
3. That costs of this Application be provided by the respondents.

The above orders are aspired by the applicants mainly on the ground which is vowed by Mr. Chance Luoga, learned counsel for the applicants in the

affidavit that is supporting this application. Such sufficient reason for the delay, according to Mr. Luoga is:

"The name of the 3rd applicant was erroneously entered (named) in the decree."(See paragraph 5).

The counsel for respondents Ms. Magreth Joseph Maggebo retorted in a counter-affidavit disputing the averments in the 5th paragraph of the affidavit in support of the application. She added that the applicants have already started to execute the consent judgment by paying T.shs 476,000,000/=. So, it cannot stand as a reason for the delay. The counsel for the respondents also avowed that the 8th paragraph is tainted with falsehood. It is beefed that the counsel for the applicants resorted to preliminary objection as delay tactics to impede timely lodgment of this application.

It should be noted, at this point that the chamber summons is made under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019. As I have indicated earlier on, it is supported by an affidavit of Chance Luoga, learned counsel for the applicants and an advocate of the High Court and subordinate courts thereto.

The hearing of this application proceeded by way of written submissions. The 3rd applicant through the 1st applicant, argued the application for the applicants. The reply submission was drawn and filled by Ms. Magreth Joseph Maggebo, learned counsel for the respondents. I am grateful to them for their well-informed submissions.

In their submission in chief, the applicants reiterated that the cause of the delay to file the review application is, among other reasons, the erroneous naming of the 3rd applicant in the decree of Civil Cause No. 4 of 2022. The error was rectified by this Court on 27th day of April 2023, they point out. To the applicants, that accounts for all days of the delay. To them, they name it as technical delay. The applicants cite the case of **Filson Mushi v. Jitegemee Saccos Ltd**, Civil Application No. 313/15 of 2021, CAT.

In response, Ms. Maggebo remarked that the decree resulting from the deed of settlement sought to be reviewed was issued on 16th March 2022 and the applicants have not accounted for each day of the delay. It was recapitulated that the application for review ought to have been filed within 30 days from the date it was issued, making reference to item 3 part III to the schedule to the Limitation Act, Cap 89 R.E. 2019. Ms. Maggebo exemplified **Lyamuya Construction Company Ltd v. Registered Trustee of Young**

Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT that the applicants should account for each day of the delay, the delay should not be inordinate and the applicants should show diligence. The counsel for the respondent invited this Court to see why the applicants did not lodge the application for review on 16/04/2022. She named **Stephen Masato Wasira v. Joseph Sinde Warioba & Another** [1999] T.L.R. 334 on the position that litigation has to come to an end. Ms. Maggebo was minded to bring to the attention of this Court the stance in the case of **R.B. Policies at Lloyds v. Butler** (1950) 1 KB 76 or (1949) 2 All ER 230 where it was underscored that:

"The reasons why we should have the statutes of limitation are inter alia that long dormant claims have more cruelty than justice in them, and the person with good cause of action, should pursue his right with reasonable diligence."

Finally, the counsel for the respondents prayed for the dismissal of the application with costs for want of merit.

In banter arguments, the applicants maintain that they are diligent without reservation. It is their view that their submissions are based on paragraph 5 of the affidavit in support of this application. They are steadfast that

erroneously naming the 3rd applicant is a sufficient reason for extension of time. They rejected the claim of the respondents that this application is frivolous, vexatious and lacking in justification. They pressed that they have accounted for each day of the delay, claiming otherwise is intended to mislead the Court, the applicants pointed out.

I am consoled by the truth that both the applicants and Ms. Maggebo are familiar with the guiding case law about extension of time within which to do what ought to have been done by a party who delayed. Now I am called to state who is missing the point here. Ms. Maggebo does not deny the fact that the name of the 3rd applicant was misspelt in the decree issued by this Court. Could the applicants lodge an application for review with such misspelt name of the 3rd applicant. I do not think so. The counsel for the respondents did not try to suggest it could be filed.


Admittedly, there is a surfeit of authorities to the effect that a technical delay is sufficient cause for extension. So far it is coming to light that Ms. Maggebo is the one who is missing the point in this application. In the present application, the applicants are not to blame. That was the stance of this Court when making an order of withdrawing Miscellaneous Civil Application

No. 582 of 2022 in not making an order for costs. This application was filed only three days after the ruling correcting the name of the 3rd applicant in the decree was delivered. That exudes promptness as stated in the case of **Lyamuya Construction** (supra) and **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002. I have no issue with the cited cases by Ms. Maggebo, namely, **Wassira's** case (supra) and **Butler's** case (supra). They are good law but unfortunately, are inapplicable in the circumstances of this application because the delay of the applicants to lodge the review application was caused by a sufficient reason.

To wrap-up, I find, as correctly argued by the applicants, that the applicants have accounted for each day of the delay. Time for lodging the intended review is extended for 21 days from the date of this ruling. Consequently, the application is granted with costs. I so order.

DATED at **KIGOMA** this 13th day of March, 2024.




J. F. NKWABI
JUDGE