

**THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MTWARA
AT MTWARA**

MISC. LAND APPLICATION NO. 4 OF 2023

(c/f The Court of Appeal of Tanzania Civil Appeal No. 247/2019 from the High Court of Tanzania (Land Division) at Mtwara in Land Case No. 12 of 2015)

TANZANIA PETROLEUM DEVELOPMENT CORPORATION....APPLICANT

VERSUS

- 1. MUSSA YUSUPH NAMWAO**
- 2. ALLY ISSA MTIPO**
- 3. REHEMA SAIDI JOHARI**
- 4. HASSAN MOHAMED LIPAKO**
- 5. RUKIA MOHAMED MAKOMBO**
- 6. ISMAIL BAKARI MTINGINYA**
- 7. FATUMA SELEMANI NANDAKA**
- 8. JUMA BAKARI ALLY**
- 9. SEIF SALUM LIYONJO**
- 10. HADIJA SEIFU DADI**
- 11. DADI ALLY MWARABU**
- 12. MOHAMED ATHUMANI BAKARI**
- 13. SALUM ALLY MJANDIKA**
- 14. HEMEDI SAIDI MANZI**
- 15. ISMAIL MOHAMED**
- 16. HASSAN ADINANI**
- 17. SINA MOHAMED MAKOMBO**
- 18. DADI ATHUMANI RASHID**
- 19. OMARI HASSAN OMARI**
- 20. ZANEN HASSAN ALLY**
- 21. HASSAN YUSUFU HASSANI**
- 22. MOHAMED HASSANI**
- 23. JUMA MUHIDINI ALLY**
- 24. ABDALLAH HASSAN KUBOMU**

.....RESPONDENTS

RULING

Date of last Order: 04.05.2023

Date of Ruling: 12.05.2023

Ebrahim, J.

The applicant has lodged the instant application praying for extension of time under the provisions of **section 11(1) of the Law of Appellate Jurisdiction Act, Cap 141 RE 2019** praying mainly for the following orders:

1. THAT, this honourable court be pleased to grant to the Applicant an extension of time for giving notice of intention to appeal to the Court of Appeal of Tanzania against the judgement and decree of the High Court of Tanzania in Land Case No. 12 of 2015 delivered on 3rd August 2018 by Honourable Judge L.M.Mlacha.
2. THAT, this honourable court be pleased to grant the Applicant an extension of time to serve the Respondents a letter applying for judgement, decree and proceedings of the High Court of Tanzania in Land Case No. 12 of 2015 delivered on 3rd August 2018.

The application was supported by an affidavit sworn by Raymond Amon Baravuga, Principal Officer of the Applicant in a position of a Senior State Attorney.

Going by the averments of the Applicant's affidavit, it is clear that the basis of the instant application is the struck out order of the Court of Appeal in respect of Civil Appeal No. 247 of 2019. The Applicant's appeal was struck out on the reason that the appeal was time barred since the Applicant failed to comply with rule 90(1) and (3) of the Court of Appeal Rules by failing to serve the respondents with a copy of its letter requesting for requisite copies from the Registrar of the High Court. The affidavit stated also that they intend to challenge a point of law that the Land Case No. 2 of 2015 at the High Court was time barred.

Upon being served with a copy of the chamber summons, the respondent filed a counter affidavit disputing the contents of the applicant's affidavit. They contended also that the Applicant has neither accounted for the days of delay nor demonstrated good cause for this court to extend time.

When this application was called for hearing, the Applicant was represented by Mr. Masunga Kamihanda, learned State Attorney

while the Respondent preferred the services of advocate Issa Chiputula.

In his submission in support of the application, Mr. Masunga firstly adopted their affidavit in support of the chamber application to form part of his submission and pointed out that they have good cause for application and that the application has been filed without an ordinate delay. He pointed out also that there is illegality in the decision intended to be appealed against.

He explained that their appeal was struck out on technical grounds (annexure TPDC 9) the fact that was noted in the Respondents' counter affidavit at para 9. He invited this court to the case of FRADY Tajiri Chawe Vs TANESCO, Civil Application No. 505/18 of 2019 at pg 13 which held that technical delay can only be applied where a party has been diligent in taking essential steps to appeal. He explained on the point that it took them like 8 days to present the instant application after the struck out order, hence it is not inordinate delay. To substantiate his argument he cited the case of **Murtaza Mohamed Raza Virani & Another Vs Mehboob Hassanali Versi**, Civil Application No. 448/01 of 2020 pg 12; and the case of **Fatuma Mohamed Vs Chausiku Selema**, Civil Application No.

228/08/2022 which allowed certain time for being inordinate for the applicants needed time to prepare and file the application.

Submitting on the issue of illegality, Mr. Masunga said they still wish to pursue in their intended appeal that Land Case No. 12 of 2015 was time barred. He prayed for the court to take judicial notice of the ruling of this court of 21.07.2017 on the preliminary objection they raised that the case was time barred. He referred to the case of M/S P & O International Ltd Vs TANAPA, Civil Appeal No. 265 of 2020 pg 12; and the case of **Kigoma Ujiji Municipal Council Vs Ulimwengu Rashid t/a Ujiji Mark Foundation**, pg 13 Civil Appeal No. 222 of 2020 on invoking the exemption under Order 7 Rule 6 of the Civil Procedure Code, Cap 33 RE 2019 on time limitation.

Mr. Masunga concluded by citing the case **of The AG Vs Emmanuel Marangakisi & 3 Others**, Civil Application No. 138 of 2019 pg 19 that illegality is a good ground to extend time. He prayed for the application to be granted.

Responding to the submission made by the Applicant's counsel, counsel for the Respondent equally adopted their counter affidavit to form part of their submission and insisted time is extended upon

a party showing good cause for the delay. He referred to the cited case of **Frady Tajiri Chawe (supra)**.

He referred the court to the case of **Lyamuya Construction Company Limited Vs Board of Trustees of YWCA(T)**, Civil Application No. 2 of 2010 which set the criteria to be considered by the court before exercising its judicious discretion to grant extension of time. The criteria are; the applicant has accounted for each day of delay (Frady's case – even a single day must be accounted for), the delay is not ordinate delay, the applicant must show diligence and not apathy; and also if there is existence of the point of law.

Referring to annexure TPDC 9 which is the order of the Court of Appeal, advocate Issa contended that the Applicant exhibits negligence for having filed the appeal in none compliance with Rule 90(1) and (3) of the Court of Appeal Rules. He cited the case of **Calico Textiles Industria Ltd Vs Pyaralies Mail Premji** [1983] TLR, 28 which held that failure by the party's advocate to check the law is not sufficient ground to extend time.

He argued also that since the decision of the High Court was delivered on 03.08.2018 and the instant application was brought on

28.03.2023, time to file notice of appeal expired on 03.09.2018 and that was when time started to run.

Advocate Issa distinguished the case of Frady with the circumstances of this case because no notice was served. He also distinguished the cited case of Murtaza (supra) that in the cited case the Applicant was sick which is different circumstance with the instant matter.

On the issue of illegality, he said he had nothing to add because they do not see any. He prayed for the court to dismiss the application with costs.

In brief rejoinder, Mr. Masunga making reference to **Lyamuya's case** maintained that the delay was not inordinate and that were not negligent. He maintained also that there is illegality. As for accounting for each day of delay, he said the same has been accounted for on technical struck out. He reiterated their prayers.

I have carefully considered the rival arguments presented by both parties' counsels. for the Applicant.

Coming to the merits of the application, it is settled principle in our jurisdiction that extension of time is discretionary power of the court to be exercised judiciously. The main issue for consideration is

whether the applicant has advanced good cause for the delay to warrant grant of this application. The phrase “good cause” has not been defined, but the Court of Appeal in the case of **Kalunga and Company Advocates vs NBC Limited** [2006] TLR 235 illustrated factors for consideration like; the length of delay involved, the reasons for the delay, the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion, the conduct of the parties and the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has constitutionally underpinned right of appeal. Further, the Court of Appeal has in the cited case of **Lyamuya Construction (supra)** expounded further on the criteria to be considered by the court to warrant extension of time. Of interest before I address other issues is the issue of illegality.

Undoubtedly, as submitted by both counsel for the parties, the Court of Appeal of Tanzania has underscored that where a point at issue is illegality, the same constitutes sufficient reason for extending time so that the said illegality can be cured. In the same vein, the Court of Appeal has also laid a principle that not every allegation of illegality will constitute a sufficient reason for extending

time. The point here being that for an allegation of illegality to constitute a sufficient reason it will depend much on the circumstances of each case. See the guidance in the case of **Tanzania Harbours Authority vs Mohamed R. Mohamed** [2003] TLR 76; also in **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania (supra)**.

Counsel for the Applicant urged this court to take judicial notice of the ruling of this case in Land Case No. 12 of 2015 where they raised a preliminary objection that the suit was time barred. He referred this court to the holding of this court where it was agreed that mere stating that the plaintiff was engaged in out of court discussion with defendant cannot act as a waiver to the time limitation. He contended also that they still maintain that the exemption of time limitation under **Order 7 of the Civil Procedure Code, Cap 33 RE 2019** does not fit in the circumstance of Land Case No 12 of 2015 hence they maintain that the case was time barred.

Verily, I cannot go into addressing the findings and the reasoning of this court in overruling the objection in respect of the time limitation as I have no such powers.

However, I can evaluate and scrutinize the relevancy of the point of law that the Applicant seek the intervention of the Court of Appeal. The issue of time limitation is the issue of jurisdiction which cannot be understated.

While it is the duty of this court to scrutinize as to whether the said illegality is on the face of the record and the extension of time shall cure such anomaly, I am of the firm stance that the issue of time limitation cannot be ignored and left unresolved. To do so might promote a danger of having a matter that the court entertained without having jurisdiction which automatically would make that decision illegal.

Now in order to avoid playing on uncertainty, I find it prudent that the path for final determination of such uncertainty for the broader sense of justice be opened.

That being said, I find that the illegality claimed which touches the jurisdiction of this court in determining the above mentioned case is good cause and sufficient for this court to warrant this court to exercise its judicial discretion to extend time.

The point of illegality under consideration is enough to dispose of this application therefore I shall not belabor to discuss other raised issues.

At the end result, I accordingly allow the application and avail the Applicant with thirty days (30) from the date of being availed a copy of this ruling to file Notice of Intention to Appeal to the Court of Appeal of Tanzania against the judgement and decree of this court in Land Case No 12 of 2015; and also to serve the respondents with a letter applying for judgement, decree and proceedings of the High Court on the above mentioned case.

Costs shall follow the main event.

Ordered accordingly.



R.A. Ebrahim
JUDGE

Mtwara

12.05.2023