

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. APPLICATION NO 535OF 2020

(From Execution No. 2 of 2019 before the District Court of Kinondoni)

FRANCIS JULIUS SEMWAIKO.....APPLICANT

VERSUS

JOHARI MOHAMED MNONDWA.....RESPONDENT

RULING

Last Order: 10th February, 2022

Date of Ruling: 24th March 2022

MASABO, J.:-

By a chamber summons filed in this court under section 14(1) of The Law of Limitation Act [Cap 89 R.E. 2019], the Applicant, Francis Julius Semwaiko, has moved this court for a leave for extension of time within which to file a revision out of time challenging the ruling of the District Court of Kinondoni in Misc. Application No.2 of 2019 dated 16th July, 2022. The chamber summons was accompanied by his affidavit in which he states that his 9 years marriage to the respondent was dissolved in 2017 by the District Court of Kinondoni in Matrimonial Cause No. 2 of 2015. That, subsequent to divorce, the trial court ordered division of matrimonial assets and maintenance of the two issues of marriage. Being aggrieved with the said decision he appealed to this court vide Civil Appeal No.168 of 2018 where

on 22nd May 2019. The appeal ended barren after being dismissed by Mutungi, J. for lack of merit. After termination of the appeal, the respondent filed Execution No. 2 of 2019 in the trial court praying that he be ordered to handover the original documents for a house located at Plot No.23 Block 6, Mivumoni –Tegeta area in Dar es Salaam a prayer which contravened the orders of the trial court. On 16th July, 2020, the court, Hon. Kiswaga in Execution No.2 of 2019 granted the prayer and ordered him to deliver the original documents of the said plot a decision which aggrieved him. Desirous of challenging it, he applied for a copy of the ruling. But, he was not furnished with the same until 24th September, 2020. He is still desirous of challenging the decision by way of revision but the period of 60 days within which to apply for revision has lapsed hence this application. He then procced that, there is an illegality in the whole decision of the executing trial court as the asset liable for execution was not decreed in Matrimonial Cause No. 2 of 2015. He also deponed that the delay was contributed by the fact that he resides in Tanga and rarely visits Dar es salaam. In a counter affidavit, the respondent sternly disputed all the averments save for the hearing and determination of the matrimonial suit, appeal and execution proceedings.

Hearing of the application proceeded in writing. The applicant who was self-represented argued that, there is an illegality in the decision sought to be challenged as it is inconsistent with the decision of Matrimonial Case No. 2 of 2015 which it is intended to execute. He exemplified that in the said matrimonial cause, the court having recognized the contribution of the

respondent in acquisition of the disputed premise, it awarded her a usufructuary right allowing her only to stay with the children. On the contrary, the decision sought to be challenged recognizes the respondent as a lawful owner. He cited the case **Transport Equipment Ltd v D.P Valambhia** (1993) TLR 9 and proceeded to argue that, illegality suffices as a good ground for extension of time. Thus, since there is an illegality in the impugned decision, a good ground upon which to grant him leave to file the revision out of time exists. He then proceeded to argue that the delay was occasioned by the court as it delayed in furnishing him with the ruling.

The respondent, represented by Ms Kishindye Thabit submitted that, the ruling for execution was delivered on 16th July, 2020 in presence of both parties. Both parties were supplied with the ruling on 4th day September, 2020 as opposed to 24th September 2020. She then proceeded that contrary to the principle in **Bruno Wenceslaus Nyalifa v. the permanent Secretary of Home Affair and the AG**, Civil Appeal No. 82 of 2017, CAT and **Bushiri Hassan v. Latifa Lukio Mathayo**, Civil Application No.3 of 2007, CAT and (all unreported), the applicant has miserably failed to account for each day of delay as hence contradicted the celebrated principle of law that in application for extension of time, the delay of even a single day must be accounted for. Regarding the averment as to illegality, it was submitted that much as illegality suffices as a good ground for extension of time, the applicant has failed to demonstrate the illegality. Lastly, she submitted that as no good cause has been demonstrated, the leave for extension of time cannot issue.

In rejoinder, the Applicant argued that illegality suffices as a good cause for extension of time as ruled in **Wenceslaus Nyalifa v. The Permanent Secretary Ministry of Home Affairs & AG**, (supra) and in **Transport Equipment Ltd v. D.P Valambhia** (1993) TLR 9. He reiterated further that the decision of the trial court which was upheld by this court in Civil Appeal No.168 of 2018 did not make any order as regards ownership of the disputed house. Thus, the orders as to ownership made by the execution court conflicts the decision and orders of the trial court as well as the orders of this court.

Upon consideration of the submission by both parties, as summarized above, I will now proceed to determine the application. As correctly submitted by the applicant, the application within which to apply for revision of the decision of subordinate court is 60 days. This duration may be enlarged by this court under section 14(1) of the Law of Limitation Act on which the instant application is preferred. The factors for consideration in the exercise of the powers vested in this court by this provision is as expounded in **Tanga Cement Company vs. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported), where it was held that:

...an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and overriding consideration is that there must be **sufficient cause for doing so**. What amount to

sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant.'

In addition, and as submitted by both parties, a point of illegality suffices as a good ground for extension of time and whenever it raised, the court is duty bound to consider it. Expounding this principle in **Transport Equipment Ltd v. Valambhia** (supra), the Court of Appeal, stated that:

when the point of illegality alleged, the court has duty a so that this even if mean extending the time for that purpose to ascertain the point and, if the alleged illegality be established to take appropriate measures to put the matter and records right.

It is similarly true that, in considering the duration of delay, the applicant is duty bound to account for all the days, even for a single day of delay (see **Bruno Wenceslaus Nyalifa v. the permanent Secretary of Home Affair and the AG** (supra) and **Bushiri Hassan v. Latifa Lukio Mathayo** (supra). In the instant application, having examined the application and the submissions made by the parties, I found the applicant to have miserably failed to account for the days of delay. As correctly argued by the respondent, the ruling was delivered on 16th July 2020 and was ready for collection on 4th September 2020. Much as it is settled that the parties should not be let to suffer from the delay occasioned by the court itself, in the

instant case, this principle can not shield the applicant as he is solely responsible for failure to collect the ruling on time.

Turning to the point of illegality, the position as stated above, is that the point of illegality suffices as a good ground for extension of time. Needless to say, for illegality to suffice as a good cause, the illegality asserted must be of sufficient importance and apparent on the face of the record. It should not be one that would only be discovered by a long-drawn argument or process. This was expounded in ***Ngao Godwin Losero Vs Julius Mwarabu***, Civil Application No. 10 of 2015 CAT (unreported). where the Court of Appeal emphatically stated thus;

“ But, it is noteworthy that in Valambhia (supra), the illegality of the impugned decision was clearly visible on the face of the record in that the High Court had issued a garnishee order against the Government without affording it a hearing which was contrary to the rules of natural; justice. Incidentally, the court in the case of Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women’s Christian Association of Tanzania (attached for ease of reference) made the following observations:-
“Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in

Vallambhia'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 also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process".

In the instant case, it has been averred that the kernel of the illegality is that, the order sought to be challenged differs from the decree of the trial court. As stated above, the applicant's key argument is that the applicant was granted a usufructuary right as opposed to ownership. That the decree allowed her to occupy the house together with the children but did not give her the right to own the entire house. While warning myself of the danger of prematurely determining the appeal, I took time to examine the decision of the trial court in Matrimonial Cause No. 2 of 2015, the decision of this court in Civil Appeal No. 168 of 2018 and the decision sought to be challenged so as to discern the illegality sought to be challenged. In my adventure, I observed that, much as illegality is a good ground for extension of time, in the instant case, it does not suffice as good ground as the illegality if any can only be discovered after a long-drawn argument.

In view of this, I dismiss the application for want of merit. As the application originated from a matrimonial cause, I will make no orders as to costs.

DATED at DAR ES SALAAM this 24th day of March 2022

X 

Signed by: J.L.MASABO

J.L. MASABO

JUDGE

