

TANZANIA / JUDGMENT

# abdutwalib a shoko versus john long and albinus tarimo 2022

## tzhc 15211 16 december 2022

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TZHCDECIDED  
16 December 2022

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA [IN THE DISTRICT REGISTRY OF ARUSHA] AT ARUSHA MISC. CIVIL APPLICATION No. 141 OF 2022 (Misc. Land Application No. 60 of 2020) ABUTWALIB A. SHOKO..... APPLICANT VERSUS JOHN LONG AND ALBINUS TARIMO..... RESPONDENT

### RULING

12th & 16th December 2022 TIGANGA, J. This is an application for extension of time filed by the applicant to be allowed to file an application for review of the decision of Misc. Land Application No. 60 of 2020 dated 8th April 2022 before Hon. Mzuna, J. The application has been brought under Section 14(1) of the Law of Limitation Act, [R.E 2019], It is made by chamber summons supported by the affidavit sworn by Mr. Shadrack Mofuru Learned Counsel. The application was counteracted by the respondent who through his counsel Mr. Patrick G.M. Maligana, filed the joint counter affidavit who noted most of the facts deposed in the affidavit filed in support of the application but disputed the fact that the application has a great chance of success. The main reasons as to why the applicant filed this application is based on the allegation that, in the ruling which this court is called upon to rectify, the court erroneously wrote the names of the parties to read according to the amended pleadings, the parties are recorded basing on the former pleading before amendment. To understand what actually happened, the background of the application is important. Misc. Land Application No. 60 of 2020 was filed asking the court to extend time within which to file an application for review of the Judgment and decree of this court vide Land Appeal No. 41 of 2015. Initially the applicants Abutwalib Shoko filed the application against the three respondent namely, John Long, Emmanuel Kivuyo and Albin Tarimo. However, in due course, the counsel for the applicant Mr. Shadrack B. Mofuru, Learned Advocate for the applicant prayed to abandon the claim against one of the respondent. Now, the point of contention is on the person among he respondent the court asked to drop. The court by then recorded the counsel to have been intending to drop Albin Tarimo and when it composed its ruling it omitted his names, and it stated those facts and made an order actually dropping him in the ruling giving effect to the prayers made by the counsel for the applicant. However, the counsel for the applicant in this

application has submitted to the Court that, in the application he made, he asked the court to drop the name of Samwel Kivuyo but erroneously the court dropped the name of Albin Tarimo. At the hearing of this application, although the respondent filed his joint counter affidavit, the applicant did not appear either personally or through the Advocate. Following that absence, the application was heard *ex parte*. While submitting in support of the application, Mr. Shadrack Mofuru told the court why the applicant did not apply for review in time. He said that, as the ruling was delivered on 08 April 2022, on 25th May 2022 he applied vide a letter to the Deputy Registrar to be supplied with the rectified copy of the ruling with the correct names of the respondents. That letter was not replied to immediately, instead, it was on 29th September 2022 when the Advocate was informed by the Deputy Registrar that he should file an application for review so that defect in the judgement can be rectified judiciously. He said, the delay to file an application for review was not due to negligence. It was due to the late reply of the Deputy Registrar because had the Deputy Registrar replied earlier on then, he would have applied for review within time. He relied on the decision of this Court in *Tamali Jairo Mwampyate vs Fakihi Mohamed Ausi*, Civil Application No. 07 of 2020, H.C NdungurU/ J, while dealing with a very similar issue, held that, wrong names in the decision of the court is a good ground for extension of time. He also cited to me a decision of my brother Hon. Kalunde, J, in the case of *Monica Sadick vs Simon Maindu*, Misc. Land Application No. 309 of 2021, which held to the effect that, delays which is caused for failure of the court to supply documents is not actual but technical delay. He asked the court to find that, the delay at hand was technical then it proceed to allow the application. Now, in resolving the main issue in this application which is whether, the application has merits, I would like to state the current and the already set threshold by the Court of Appeal of Tanzania to be fulfilled before an order for extension of time is sought and granted. There is a legion of authority to that effect, one of them being the case of *Lyamuya Construction Company Limited versus Board of Registered Trustees of Young Women's Children Association of Tanzania*, Civil Application No. 02 of 2010 (all unreported) in which it was held *inter alia* that for the application for extension of time to be granted, the applicant must;

- (a) account for all the period of delay.
  - (b) the delay should not be inordinate.
  - (c) show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
  - (d) If the court feels that there are other sufficient reasons, such as the existence of point of law of sufficient important, such as the illegality of the decision sought to be challenged."
- Without fulfilling the above stated conditions, the application sought cannot be granted in favour of the applicant. Generally speaking, the grant or refusal of an application for extension of time is discretionary to the court. However, that discretion must as a matter of law be exercised judiciously. The judicial exercise of the discretion should be based on the set threshold in the cases cited above and those cited to me by the learned counsel for the applicant. Now, looking at the reasons cited given for the delay, one could really note that the delay was not intentional. What is noted is that, the applicant immediately after noticing

the difference wrote a letter asking for rectification of the ruling, and when he was answered and advised to file an application for review, it was already late. As correctly submitted by the counsel for the applicant, delay was technical casting no blame to the applicant. That being the case, I find the applicant to have adduced good cause to entitle him extension of time. Therefore, the application is granted. The applicant is hereby given 14 days to file an application for review. Since the application has not been contested no order as to costs is made. It is ordered accordingly. DATED at ARUSHA, this 16th day of December, 2022 JUDGE 6

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