

TANZANIA / JUDGMENT

Enos Ruling

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DECIDED
15 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE SUB-REGISTRY OF
MWANZA) AT MWANZA MISC. CIVIL APPLICATION NO. 12389 OF 2024 (Arising from execution
Case No. 12 of 2023 originating from Land Case No. 44 of 2013) ENOS ISAACK
..... 1ST APPLICANT YOLANDA ISACK MAHULU
(Administratrix of the Late Isack Mahulu) 2ND APPLICANT VERSUS
NYAKATO ENTERPRISES 1ST RESPONDENT DEODORY JOHN
..... 2ND RESPONDENT KULWA FIDEL WABANHU
..... 3RD RESPONDENT MINISTRY OF LAND AND HOUSING AND
HUMAN SETTLEMENT..... 4TH RESPONDENT ATTORNEY
GENERAL 5TH RESPONDENT MWANZA CITY COUNCIL
..... 6TH RESPONDENT

RULING

15th November, 2024 CHUMA, J. The applicant in this application is seeking the indulgence of this court to grant an extension of time to file a Notice of Appeal to the Court of Appeal in respect of execution case No. 12 of 2023. The application is preferred under Section 11(1) of the Appellate Jurisdiction Act Cap. 141 R.E 2019 supported by the affidavit sworn by Jestil Julius Kadaraja. This application was disposed of by way of written submission which was filed 1 by Mr. Kadaraja advocate for the applicants, the first to third respondents were unrepresented, and Mr. Felician Daniel and Mr. Joseph Vungwa State Attorneys for the 4th to 6th respondents. In his submission, Mr. Kadaraja advocate for the applicant stated that the impugned decision in execution No. 12 of 2023 bears only three decree holders and judgment debtor’s contrary to what appears in Land Case No. 44 of 2013 in which the plaintiffs were 25 and 6 defendants. More so changing the status of the parties from the decree holders to the judgment debtors. Mr. Kadaraja argued that the pointed illegalities require attention and intervention of the Court of Appeal upon grant of the sought enlargement of time. He fortified his submission by the case of Kempinski Hotels S.A Vs. Zamani Resort Limited Civil Application No. 154/15 of 2020 on page 15. Regarding the technical delay, Mr. Kadaraja asserted that the applicants’ delay in filing a notice of appeal was caused by the fact that the applicants were pursuing their rights in the wrong forum which is Civil Application No. 964/08 of 2023 aimed to challenge the execution No. 12 of 2023 which were withdrawn by the Court of appeal for the applicants to file an appeal instead. The submission by Mr. Kadaraja faced a strong challenge from the respondents altogether in their submissions. The

respondents argued that 2 the applicants failed to account for each day of delay in the sense that 30 days to lodge a notice of appeal to the Court of Appeal in respect of execution No. 12 of 2023 ended on 9th September, 2023. And that from the date when application No. 964/08 of 2023 was withdrawn to the date of filing this application. The case of The Director, Mwanza City Council Vs. Merali & Sons Ltd (Misc. Land Application No. 8100 of

2024) on page 10 was cited to support their submission. They also challenged the issue of illegalities for being baseless. Likewise, the issue of technical delay was contested on the ground that the applicants was represented by a counsel who is conversant with legal procedures in handling civil litigation. They finally prayed for the dismissal of the instant application with cost. In his rejoinder submission, apart from the issue of filling, Mr. Kadaraja repeated almost his submission in chief and did not see any need to reproduce the same. Having heard the contending submissions of the parties, this court is duty-bound to determine whether this is a suitable occasion to condone the delay involved and proceed to extend the time to lodge the intended Notice of appeal. 3 It is a cardinal law that in an application of this kind the applicant must establish sufficient cause as held in the case of Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (unreported). The conditions were set out in the case of Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania Civil appeal No. 2/2010. What amounts to sufficient or good cause has been discussed in a range of cases including the Court of Appeal case of John Mosses and Three Others Vs. The Republic, Criminal Appeal No. 145 of 2006 where the position of the law stated in the case of Elias Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005 was quoted. See also the Court of Appeal decision in the case of Blue Line Enterprises Ltd. Vs. East African Development Bank, Misc. Application No. 135 of 1995 (unreported) where it was held that: - "It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, 'upon sufficient cause being shown which has to be objectively assessed by Court.'" From the above position, parties' pleadings, and submissions, the reasons advanced by the applicants in their application are mainly 4 technical delay and illegalities attributed to the wrong pursuit of the applicants' rights in an improper forum and changes of the party's status in the impugned decision. On technical delay, it was the argument of Mr. Kadaraja's advocate for the applicant that at some point they tried to challenge the impugned decision in execution No. 12 of 2023 via Civil Application No 964/08 of 2023 which was withdrawn by the Court of Appeal for the applicants to challenge it via appeal. This fact was confronted by the respondents arguing that the applicants was represented by counsel conversant with legal procedures. And that the applicant failed to account for each day of delay. As rightly submitted by Mr. Kadaraja advocate, the record is quite clear that parties appeared on several occasions before the court to pursue their application against the execution decision. And that the application was withdrawn by the Court of Appeal for the applicants to follow proper truck for redress. From the record for all that time till when the application was withdrawn the applicants

was pursuing their case in court trying to challenge the decision in execution No. 12 of 2023. The applicant narrated a chain of events explaining what transpired since filling out the application to the date when it was withdrawn by the Court of Appeal. I distance myself from the respondents' submission that the applicants had 5 legal assistance from the lawyers conversant with legal procedures because seeking remedy in the wrong forum cannot be taken as negligence by the applicants' side. He has shown sufficiently in my view that he was diligently pursuing the matter. This is evidenced by the time taken to file this application after the court order withdrawing the referred application. It is this court's findings that the applicant managed to justify the reasons for the delay to be none other than technical delay which is explicable and excusable. This stance was held in several cases including the case of Salvand K.A. Rwegasira Vs. China Henan International Group Co. Ltd Civil Reference No. 18 of 2006 and that of Fortunatus Masha Vs. William Shija and Another [1997] TLR 154. On illegality concern, my close look at the impugned decision in execution No. 12 of 2023 and the decree in Land Case No. 44 of 2023, it is amply clear that the parties appearing therein differs, and a change of some of the party's status from being decree holder to a judgment debtors. The pointed-out anomalies in my view and as rightly submitted by Mr. Kadaraja advocate for the applicants require intervention of the Court of Appeal. These findings are supported by the case of Principal Secretary, Ministry of Defence and National Service Vs. Devram Vallambia 6

[1992] TLR 185. where the Court of Appeal held that; "In our view, when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and record straight". More so the Court of Appeal in the case of VIP Engineering and Marketing Limited and three others Vs. Citibank Tanzania Limited, Consolidated Civil Reference No. 6,7 and 8 of 2006, the court stated that; "A claim of illegality of the decision being challenged, that by itself constitutes sufficient reason for extending time to file a notice of appeal". I as well aware as what was held in the case of Lyamuya Construction Company Limited Vs. The Board of Trustees of Young Womens' Christian Association of Tanzania, Civil Application No. 2 of 2010 that an illegality must be apparent on the face of the record, I am fully persuaded in the case under scrutiny, the pointed-out anomalies amount to illegality on the face of the record. The anomalies cannot be established by engaging in a long-drawn process of arguments. Guided by the above authorities and from the above discussion, the 7 reasons advanced by the applicants constitute sufficient cause for this court to think of granting the sought order. That said and done, I find the instant application meritorious and is accordingly granted. The applicant is accorded 14 days to lodge the intended Notice of appeal. Owing to the circumstances of the matter I desist from making an order for cost. It is so ordered. DATED at MWANZA this 15th day of November, 2024. W.M. CHUMA JUDGE 8 The ruling delivered in court before Mr. Kadaraja advocate for the applicants, Mr. John for 2nd respondent, Mr. Allen Mbuya State Attorney for the 4th to 6th respondents this 15th day of November, 2024. W.M. CHUMA JUDGE 9

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