

TANZANIA / JUDGMENT

gerion francis tairo vs jumanne said kitila another 2023 tzhc 20209 14 august 2023

COURT
TZHCDECIDED
14 August 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 600 OF 2022 (Arising from the High Court of Tanzania - Dar es
Salaam District Registry in Civil Appeal No. 51 of 2016) GERION FRANCIS
TAIRO..... APPLICANT VERSUS JUMANNE SAID
KITILA..... 1st RESPONDENT HAMIS
IDD..... 2nd RESPONDENT

RULING

21st June & 14th August, 2023 BWEGOGGE, J. This is an application for grant of extension of time within which the applicants may file a notice of appeal to the Court of Appeal of Tanzania against the decision in Civil Appeal No. 51 of 2016 delivered on 21st November, 2016. i The background of this matter, as depicted by the pleadings filed hereto, may be briefly stated thus: Previously, the 1st respondent herein commenced civil proceedings in the District Court of Kinondoni against the applicant and 2nd respondent herein for declaratory orders that the suit property (landed property described as Plot No. 264 Old Kinondoni Sekenke Street in Dar es Salaam) belonged to the estate of the late Fatuma Puza @ Fatuma Pyuza; the 1st respondent be declared the lawful and legal representative of the estate of the late Fatuma Puza @ Fatuma Pyuza; eviction of the applicant and 2nd respondent from the suit property and vacant possession of suit property, among others. The trial court decided in favour of the 1st applicant. The decision was delivered on 10th February, 2016. The applicant herein, being aggrieved with the decision of the trial court, lodged an appeal (Civil Appeal No. 51 of 2016) in this court. The appeal failed and the decision of the trial court was upheld. Undaunted, the applicant lodged a notice of appeal in the Court of Appeal on 22nd November, 2016. Leave to appeal to the Court of Appeal was likewise granted by this court on 30th April, 2018 in Misc. Civil Application No. 830 of 2016 whereas on different occasions, the applicants had lodged requests to the deputy registrar to be supplied with court documents for 2 the purposes of appeal. And, subsequent to the reception of notice to show cause why execution of decree should not ensue in the trial court, the applicant lodged an application for stay of execution in the Court of Appeal in Civil Application No. 254/01 of 2019 which was duly granted on 19th November, 2020. Allegedly, consequent to inaction by the applicant to take steps to initiate the intended appeal, the respondents filed an application (Civil

Application No. 41/01 of 2022) in the Apex Court praying for an order to strike out the notice of appeal previously lodged. Eventually, the application was granted on 22nd November, 2022. Hence, this application. The applicant was represented by Mr. Roman Selasini Lamwai and Ms. Mary Masumbuko Lamwai, learned advocates. Mr. Mwang'enza Mapembe, learned advocate, represented the respondents. The application was argued by written submissions. The substance of the submissions made by the counsel herein is briefly recounted hereunder. Mr. Lamwai argued that the applicant herein was never supplied with requested court documents in respect of Civil Case No. 23 of 1998. That despite of the fact that the deputy registrar has never issued the applicant with a letter notifying him to collect necessary court 3 documents for preparation of the record of appeal, the Apex Court had granted an application for striking out the notice of appeal. Further, the counsel argued that the purported notification letter issued by the deputy registrar was served to the respondents only, despite his reminder letters requesting to be supplied with court documents. In the same vein, the counsel contended that, be that as it may, the court documents could not have been ready for collection as intimated in the purported notification by the deputy registrar, as the applicant was previously informed by the Resident Magistrate in charge of Kindoni District Court on 05th December, 2022 that the original case (Civil Case No. 23 of 1998) had been remitted at the National Records and Archive in Dodoma; hence, the record required could not be supplied. Therefore, the counsel argued, the court documents could not have been in place for supply to the parties as purported by the notification by the deputy registrar dated 20th September, 2018. In tandem to above, the counsel argued that the applicant having lodged the letters requesting for the court documents and later on issued remainder letters, under the principle of home and dry, he was not required to make follow-ups to the deputy registrar until when the same was notified that the documents were ready for collection. The 4 counsel cited the case of Exaud Augustino Kawayu vs CRDB Pic (Misc. Civil Application 26 of 2021) [2021] HC 308 to bolster the point. Generally, it is the argument by the applicant's counsel that the purported letter of the deputy registrar dated 20th September, 2018, notifying the parties herein that court documents were ready for the collection was misconceived. And, the Court of Appeal was supposed to have inquired into the veracity of the document before granting an application for striking out the notice of appeal. That, the above notwithstanding, the applicant has taken 38 days since the notice of appeal was struck out to institute the present application and just seven 7 days since the proceedings were made available to the applicant. On the above premises, the counsel asserted that there is sufficient cause advanced by the applicant for grant this application. Hence, this court should exercise its discretion wisely. On the other hand, Mr Mapembe, counsel for the respondent countered that based on the decision of the superior court in striking out the notice of appeal, the applicant's conduct towards the institution of the intended appeal was inconsistent with a degree of follow-ups reasonably expected of a seriously committed, diligent and militant litigant. That this court, though vested with discretionary power to extend time, such power 5 should be exercised judiciously taking into consideration the circumstances of the case herein in which it has been pointed out that the applicant has not acted with due diligence required from him. Further, the counsel argued that the main ground supporting the application for extension of time herein is that he was not supplied with a certified court documents in respect of Civil Case No. 23 of 1998

whereas the same, per record annexed to the pleading filed hereto, applied for court documents in respect of the Civil Appeal No. 1 of 2016 only. Hence, the argument that failure to file the intended appeal in time was occasioned by non-supply of the court document in respect of the Civil Case No. 23 of 1998 is an afterthought. That this ground was never fronted before the Court of Appeal for the court to decide upon. That the only argument fronted by the counsel for the applicant in the Apex Court is that notification issued by registrar dated 20th September, 2018 was not genuine and was not served to him. And, the counsel opined that the record entails that the request to be served with court document pertaining to the original case was made on 24th November, 2022, one day after striking out the notice of appeal by the Apex Court. The counsel prayed this court to align itself with the decision of the Apex Court in refusing the application herein. 6 In tandem to above, the counsel prayed this court consider the fact that the dispute between the parties herein has been pending in courts for 25 years now, whereas the 1st respondent has been denied right to enjoy the fruit of his decree. Otherwise, the counsel contended that the applicant has failed to account for each day of delay from 20th September, 2018 when the court documents were ready for collection to the date of filing of this application. The counsel cited the case of Bushiri Hassan versus Latifa Lukio Mashayo, Civil Application No. 03 of 2007 CA (unreported) to buttress his point. In rejoinder, the counsel for the applicant reiterated his previous stance, which I find it needless to replicate herein. The issue for determination is whether the application herein is merited. Primarily, it is the rule of law in this land that extension of time is granted for good and, or sufficient cause. What amounts to a good and, or sufficient cause depends on the circumstances of the particular case. See the cases of Michael Lessani Kweka vs John Eliafye [1997] TLR 152; John Dongo and 3 Others vs Lepasi Mbokoso (Civil Application 14 of 2018) [2019] TZCA 165 Keith Horan & Another vs 7 Zameer Sherali Rashid & Another (Civil Application 105 of 2019)

[2019] TZCA 437. In the same vein, it is settled law that each period of delay must be accounted for. See the cases of Lyamuya Construction Co. Ltd vs Registered Trustees of Young Women Christian Association (Civil Application 2 of 2010) [2011] TZCA 4; Mr. Manson Shaba & 143 Others V. The Ministry of Works & 2 Others, Civil Application No. 244 of 2015 CA (unreported) ; Selemani Juma Masala vs Sylvester Paul Mosha & Another (Civil Application 210 of 2017) [2021]TZCA 565; and Jubilee Insurance Co. (T) Ltd vs Mohamed Sameer Khan (Civil Application 439 of 2020) [2022] TZCA 623, among others. It is not in dispute that the decision of this court sought to be appealed against was delivered on 21st November 2016. And notice of appeal was lodged a day thereafter. Likewise, the leave to appeal was granted on 30th April, 2018 whereas the Apex Court struck out the notice of appeal lodged by the applicant on 22nd November, 2022, four years later, allegedly, for the applicant's failure to take necessary legal action to institute the intended appeal. 8 In striking out the notice of appeal filed by the applicant, the Apex Court had this to say: "•.... it is not disputed that by his letter dated 20/09/2018, the Registrar notified the respondent to collect the documents requested. It follows, therefore, that the issue of the Registrar's failure to supply to supply the respondent with the documents required as the reason for the latter's failure to file an intended appeal should not have been raised. Whether or not

the said Registrar's letter was genuine, Ms. Lamwai should have inquired with the Registrar to get it from the horse's mouth rather than, as is the case, if at all doubting it and just staying back. With respect, the learned counsel ought to have exercised due diligence by following up the matter with the Registrar, which she did not. In other words, her approach was inconsistent with a degree of follow ups reasonably expected of a serious committed, diligent and militant litigant. It doesn't need over emphasis therefore, that, in civil matters, the intending appellant's ability and vigilance to prepare and file a record of appeal timely depends on the Registrar's ability to discharge his duty timeously, as required under rule 90(5) of the Rules. It equally noteworthy that the moment the Registrar wrote to notify the respondent to collect the documents under rule 90 (5) of the Rules on 20/09/2018, he was done. It follows therefore that a party who wishes to appeal and is militantly committed to having his matter getting to finality therefore, he is pursuant to sub-rule (5) of the rules required to follow up the matter. To expect anything more from the Registrar is tantamount to excessive demand from the latter which we cannot allow. See the case of Jumanne S. Kitila and Another vs Gerion Francis Tairo (Civil Application 41 of 2022) [2022] TZCA 731. 9 I agree with the counsel for the respondent that, during the hearing of an application for striking out the notice of appeal, the counsel for the applicant didn't advance the ground that his failure to lodge the appeal was occasioned by non-supply of the document of the original case. This argument surfaced in this court. The only argument advanced by the counsel for the applicant is that the notification by the registrar dated 20th September, 2018 was neither genuine nor served to the same. This argument was rejected by the Superior Court. I need not belabour on this argument. It is needless to say that, at present, the applicant's counsel hasn't ascertained that the impugned notification was forged. And, it is my observation that the original records was subject of appeal in this court and it formed part of the record in the relevant appeal. If at all the said case was remitted at the National Archive, it was after the conclusion of appeal. I am at loss as to why the applicant didn't seek to be provided with the relevant court documents during the 1st appeal. As rightly intimated by the counsel for the respondent, the documents in original case were not among the records requested for the purpose of appeal. Likewise, a refuse to purchase the argument that the applicant having requested for court documents and issued a reminder letter was no io obliged to make a follow-up of the matter. Inaction for such a long period, from the date the notification was issued to the time the notice was struck out, doesn't exhibit diligence on part of the applicant. It is obvious that the follow-up on the matter would have unveiled the uncertainty of the impugned notification of the deputy registrar at the earliest stage. It is settled law that good cause for extension of time encompasses the fact on whether the applicant had acted diligently and promptly in taking legal action. See the cases of Omary Shabani Nyambu vs Dodoma Water and Sewerage Authority (Civil Application 146 of 2016) [2016] TZCA 94; Tanga Cement Company Ltd vs Jumanne Masangwa and Another (Civil Application 06 of

2001) [2004] TZCA 45 and Regional Manager, TANROADS Kagera vs Ruaha Concrete Co. Ltd, Civil Application No. 96 of 2007 CA (unreported). Based on the foregoing, I join hands with the decision of the superior Court in that the record of appeal was ready for collection on 20th September, 2018. Therefore, the applicant was obliged to account for a period of delay from the date of notification to the date filing of this application. This obligation, likewise, the applicant failed to discharge. li In the same vein, it is patently clear that the dispute between the parties herein has been pending in court since 1998 to date. It is the law of this country that one of the considerations for extension of time is the degree of prejudice to the respondent if time is extended. See the cases of Jubilee Insurance Co. (T) Ltd vs Mohamed Sameer Khan (supra) and Tanga Cement Company Ltd vs Jumanne Masangwa and Another (supra). It is needless to point out that taking into consideration the time this matter has been pending in court, the respondents would be prejudiced if this matter is further protracted on flimsy ground(s). In view of the afore going, I find that the applicant failed demonstrate sufficient cause to warrant grant of extension sought. Consequently, the application herein is hereby dismissed. The respondents shall have their costs. So ordered. DATED at DAR ES salaam this 14th day of August, 2023. JUDGE 12

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/301021/source_file/gerion-francis-tairo-vs-jumanne-said-kitila-another-2023-tzhc-20209-14-august-2023.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/gerion-francis-tairo-extensionoftime-tzhc-2023>

Prepared on 14 October 2026 · Esheria