

TANZANIA / JUDGMENT

gidbaghe layda vs emmanuel barie and 2 others 2023 tzhc 16438 31 march 2023

COURT
TZHCDECIDED
31 March 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA DISTRICT REGISTRY
AT ARUSHA MISC. CRIMINAL APPLICATION No. 64 OF 2022 (C/F the decision of the High court
of the United Republic of Tanzania in the District Registry of Arusha in PC Criminal Appeal No. 21
of 2020 from the District Court of Karatu, criminal appeal No. 36 of 2019 originating from Karatu
Primary Court in Criminal Case No. 577 of 2019) GIDBAGHE

LAYDA..... APPLICANT VS EMMANUEL

BARIE..... 1st RESPONDENT LAURENT

TLUWAY..... 2nd RESPONDENT WILBROAD

MAGANGA..... 3rd RESPONDENT

RULING

Date of last order 13/03/2023 Date of ruling 31/03/2023 BADE, J. The Applicant herein filed this application applying for an extension of time and other reliefs this court deems fit to grant. He filed a chamber summons supported by an affidavit, sworn by the Applicant on 3rd November 2022. He made this application moving the Court under section 11 of the Appellate Jurisdiction Act, Cap 141 [Cap 141 RE 2019], and any other enabling provision of the law. The Parties herein were unrepresented; and prayed and were granted an order to argue this application by way of written submissions, pursuant to Page 1 of 8 an order of this court 06th of February 2022. The parties duly abided by the schedule and filed accordingly. According to the Applicant, the basis of his prayer for an extension of time is as shown under para 8 and 9 of the affidavit, which is illegality. Under para 9 he expresses that he is a layman hence he filed the 1st application incompetently and was struck out by Malata, J. for being incompetent and time-barred. The Applicant further argued that there was a late supply of copies of the decision, and it has been one of the reasons that caused his application to be struck out since he did not attach a copy of the said decision of PC Criminal Appeal No. 21 of 2020. The Respondent made a reply submission, in which they stated that the application filed by the Applicant previously was struck out because it was time-barred. The respondents further averred that it is also not true that the Applicant was not served with a copy of the decision for PC Criminal Appeal No 21 of 2020. They firmly maintained that the moment the applicant filed his prior application, he served them with a copy so that they too could file their counter Affidavit, and they took note that the said copy of PC

Criminal Appeal No. 21 of 2020 was attached in the copy of the application supplied to them. In that regard, they described the applicant as a liar and advertently misleading the Court. In the rejoinder submission, there was nothing new on the part of the Applicant. He simply reiterated his earlier submission, and that being the case I need not reproduce the repetition. Page 2 of 8

The issue for determination is whether this application is meritorious on the basis of what is deponed to and submitted. Enlarging time is a discretion of this Court that must be exercised judicially on proper analysis of the facts and application of the law to the facts. The power to enlarge the time within which to undertake a judicial process such as an application for leave to file an appeal out of time is a discretionary one, and the party seeking such discretionary orders which are only given on a case-to-case basis, not as a matter of right, must satisfy the court by placing some material before the court upon which such discretion may be exercised.

Applications for enlargement of time within which to appeal will not be granted if the delay is inexcusably long, where injustice will be caused to the other party or where there is no reasonable justification. This Court's deliberation will be guided by the case of *Lyamuya Construction Co. Ltd vs Registered Trustees of Young Women Christian Association* No. 02 of 2010, [2011] TZCA 4 (TANZLII) where the Court of Appeal has laid down some describable conditions when one wishes to apply for time enlargement as follows: Firstly, the Applicant must account for the whole period of delay; Secondly, the delay should not be inordinate; Page 3 of 8

Thirdly, the Applicant must show diligence, not apathy, negligence, or sloppiness in the prosecution of the action that he intended to take; Fourthly, there is an illegality that arises from the violation of fundamental legal principles; Fifthly, if the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; Having perused both parties' submissions, the first thing I realized is that the applicant has argued with regard to the fact that there was a delay in issuing copies of the decision in PC Criminal Appeal No. 21 of 2020 as among the reason that makes him justified in praying that this Court should grant him an enlargement of time. Since Parties are bound by their own pleadings and evidence, this court joins hands with the Respondent that this argument lacks merit as it was not pleaded in the Applicant's affidavit. More importantly, he has not been able to show on which dates his allegations of delay in receiving the copies of the judgment are at issue. Page 4 of 8

In any case, the Respondents have called him out on the white lie that he has purportedly told this court; and the applicant did not find it pertinent to respond to it in his rejoinder. The principle of the law is clear that he who comes to equity must come with clean hands. This means the court will deny an equitable relief to a party who has violated good faith with respect to the subject of the claim. I don't see the Applicant's hands being clean on this one. With regards to illegality as averred in para 8 of the Applicant's affidavit, the Applicant had to substantiate this fourth condition for the Court to exercise its discretion for extension of time as established by the said case, where the Applicant has to demonstrate the legal principle violated and it has to be on the face of records not requiring proof in evidence. Since there is no illegality shown by the Applicant, it is not the duty of this court to substantiate such illegality on behalf of the Applicant by looking for it, hence the Court subscribes to the Respondent's position that the Applicant has failed to establish the said illegality as there is nowhere it is seen either in the pleading or his submission. Page 5 of 8

The Applicant averred at para 9, that he is ignorant of the law, which made him file the previous

application out of time and under the wrong law; the grounds which led to his application being struck out before Malata, J. It is a legal principle tritely stated that ignorance of the law has got no excuse, but more so as guided by the Lyamuya's case (supra), that the Applicant must show diligence, not apathy, negligence, or sloppiness in the prosecution of the action that he intended to take. The Applicant's prior application was found incompetent before the Court because he acted recklessly. As I have alluded to, when an application is made for an enlargement of time, it should not be granted as a matter of course. Grant of extension of time is discretionary and depends on proof of "good cause" showing that the justice of the matter warrants such an extension. The court is duty-bound to carefully scrutinize the application and its accompanying affidavit to determine whether it presents sufficient grounds justifying the grant of such an order. The evidence in support of the application ought to be carefully scrutinized, and if it is not made clear that the applicant comes within the terms of the established conditions, then the order ought to be refused. Page 6 of 8 It is only if that evidence makes it absolutely plain that the applicant is entitled to the application to be granted and the order made. Besides, an unscrupulous party may just decide to concoct some facts and keep the opposing side from realizing the attained fruits of litigation. It is obvious such an order if granted, may have the effect of depriving the parties of a very valuable right to the finality of litigation. In all fairness, the rules of the procedure entail and regulate timelines and timeliness of procedural action for purposes of redressing the aberration of delays in litigation, so as to facilitate the timely and final resolution of disputes. It is a constitutional imperative that litigants should know with finality, and within a reasonable time, the Court's decisions on the claims brought before the Courts. Parties should not be held captive to endless litigation, and the Courts are not going to allow unscrupulous parties to abuse the legal system to front endless litigation. The endless filing of applications that have no basis before the Court affects the certainty and finality of the matter. The Applicant should know better, count his losses and move on. In the upshot, I am not convinced that the Applicant's application has met the requirement for the order to issue, and it ought to be dismissed. It is hereby dismissed with costs. Order accordingly. Page 7 of 8 DATED at ARUSHA on the 31st of March 2023. A.Z. BADE JUDGE 31/03/2023 DELIVERED at ARUSHA on the 31st of March 2023 before the parties I their representatives in chambers. A.Z. BADE JUDGE 31/03/2023 Page 8 of 8

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