

TANZANIA / JUDGMENT

MISC

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB REGISTRY AT MUSOMA MISC. CIVIL
APPLICATION REFERENCE NO. 202404301000009552 (Arising from Misc. Civil Application No. 06
of 2022 of High Court of Tanzania - Musoma Sub Registry) YAKOBO RYOB AIRONDO.....
APPLICANT VERSUS MANYAKI BHOKE JOKIHINDA..... RESPONDENT

RULING

06th & 11th June, 2024 M, L. KOMBA, J.: The application at hand is for extension of time to file application for Review out of time against decision of this court before Hon. Mahimbali J, in Misc Civil Application No. 06 of 2022. The application premised under section 14 of the Law of Limitation Act [CAP 89], Section 95 and Order XLII Rule 1 of the Civil Procedure Code [Cap 33]. The same is supported by an affidavit sworn by the applicant, Yakobo Ryoba Irondo. On the other side, respondent filed counter affidavit. The facts of the matter as can be gathered from the record as follows. Against the Respondent, the Applicant filed Application No. 06 of 2022 Page 1 of 8 seeking to this court certification of law as the legal requirement for the matter originating to Primary Court and if there is desire to appeal to the Court of Appeal. High Court found there was no points worth to be forwarded to the Court of Appeal hence dismissed the application. The Applicant timeously lodged application for Revision No. 723/8/2023 to Court of Appeal on 31 July 2023 which was later on, on 25th April 2024 withdrawn hence the current application which was lodged on 29 April 2024. The Application is resisted by the Respondent who lodged her counter affidavit on 25th May 2024, same was deponed by Manyaki Bhoke Jokihinda who is the Respondent. During the hearing of the application, the applicant was represented by Mr. Innocent Kisigiro while the respondent had a legal service of Mr. Juma David Mwita, both are learned advocates. The counsel for applicant was the first to address this court that, they are praying for time as indicated in paragraph 3 of affidavit that the matter was finalized in High Court on 18/7/2023. On 31/7/2023 applicant filed revision to the Court of Appeal of Tanzania applying for Revision of the High Court decision in Misc Civil Application No. 06 of 2022. Counsel further submitted that on 25 April 2024, before hearing the Court prompted the applicant if the matter was properly filed and upon Page 2 of 8 discussion it was agreed that the application has to be filed to High Court by way of review and not revision. Following that discussion, counsel for applicant prayed to withdraw application so that he can pursue the directives of the Court that the matter has to be filed to the High Court. Noting he is out of 60 days as provided under the law, he applies for time as indicated in affidavit paragraph 13, 14 and 15 that from July 2023 up to 25

April 2024 the matter was at the Court of Appeal where applicant was fighting for his right and there was no wastage of time. According to the counsel, the application for revision was right path as there was error on record and there is illegality in expunged ruling as deponed at paragraph 6, 7, 12, 14 and 17 of applicant's affidavit that there was no fair hearing as per Constitution of United Republic of Tanzania. Addressing the issue in counter affidavit he submitted that applicant has explained at paragraph 13, 14, 15 and 17 why he failed to file this application on time, among the reasons he registered is and having an application in the Court. He supplied the decision in Phinya Group of Companies vs Laurent Anicet & 2 Others (Misc. Application No. 456 of 2024) [2024] TZHC 2342 (30 May 2024), Marwa Mwita vs Republic Misc Criminal Appl No. 54 of 2022, Abdutwalib A. Shoko Page 3 of 8 Versus John Long and Albinus Tarimo (Misc. Civil Application 141 of 2022) [2022] TZHC 15211 (16 December 2022) and Fortunatus Masha vs Wiliam Shija 1997 TLR 154. Further on illegality he prayed this court to read Ngoni Matengo Corporative Marketing Union vs Ally Mohamed Othman 1959 EALR at 577 and Hash Energy Tanzania Ltd vs Hamis Maganga Civil Appl. 200/16 of 2020 HC DSM while citing Mbeya Rukwa Auto Parts and Trans Ltd vs Jestina George Mwakyoma 2003 TLR 251 and prayed the application to succeed. In resisting the application Mr. David Mwita started by introduction on what happened at the Court. The preamble as submitted by counsel for applicant was not correct, he submitted that Justices of Appeal advice counsel for applicant to file an appeal instead of the revision with the purpose of serving time and the advice counsel to withdraw the matter. Arguing against application, Mr. Mwita was of the submission that there is only one ground that suffice to persuade this court so that it can grant application for extension of time; The only ground is sufficient cause which led to such delay. It was his submission that the option of revision instead of an appeal is not good cause as it was made under ignorance which has never been good cause to grant time. Citing the case of Page 4 of 8 Ngao Godwin Losero vs Julius Mwaraba Civil Appi. No. 10 of 2015 CAT at pg 5 the court insisted on reason for the delay before granting time. As applicant went to improper forum that alone is not good cause. Counsel for respondent submitted that the case of Phinya Groups of Company is distinguishable as in Phinya's case the reason for delay was system failure which he did not dispute that to be a good cause but in the case at hand the delay was due to the counsel lack of delegacy and ignorant to the law. He further distinguished the case of Marwa Mwita (supra) as in that case there was a problem of court records and applicant write a letter to court to be rectified while in the case at hand all record was intact and issued within time. He went on distinguishing the case of Abutwalib (supra) as counsel is looking for apathy, he was negligent and did not act diligently. He said further that Ngoni Matengo (supra) is distinguishable as the High Court did not dismiss the case as it was not properly before it, but because the judge did not find substance in the applicant's application, to cement on procedures before High Court, He submitted that both parties were given time to be heard and there were no new issues raised by the Judge suo motto and complained that applicant wants to Page 5 of 8 deploy the rights of the respondent and prayed this application to be dismissed with costs. During rejoinder Mr. Kisigiro submitted that it was not ignorance of law when the applicant decided to file the matter to Court of Appeal as Review and the Revision were both best options and the applicant decided to opt for revision. He insisted the current application is not a delay technic rather this court has to do justice. On my part, having heard both sides submissions and gone through the affidavit and

the counter affidavit, the issue I am required to resolve is whether the applicant has adduced sufficient cause warranting this court to grant the extension of time sought. It has been said time without number that extension of time is the discretionally exercise of the court which have to be applied judiciously. For instance, in Omary Shabani Nyambu vs Dodoma Water and Sewerage Authority, Civil Application No. 146 of 2016 the Court of Appeal, at page 6, had this to state: 'It is significant to emphasize that the Court's discretion in deciding whether or not to extend time must be exercised judiciously and not arbitrarily or capriciously, nor should it be exercised on the basis of sentiments or sympathy. Fundamentally, the said discretion must aim at avoiding injustice or Page 6 of 8 hardships resulting from accidental inadvertence or excusable mistake or error, but should not be designed at assisting a person who may have deliberately sought it in order to evade or otherwise to obstruct the cause of justice'. [See also: Nyabazere Gora vs Charles Buya (Civil Appeal No. 164 of 2016) [2019] TZCA 454 (6 December 2019) and Victoria Real Estate Development Limited vs Tanzania Investment Bank & Others (Civil Application 225 of 2014) [2015] TZCA 78 (3 July 2015). Counsel for applicant explained at paragraph 13 of affidavit that since 18 July 2023 up to 25th April 2024 when application was called for hearing was in wrong forum and it was not possible to run two horses. The first application was filed on time but withdrawn so that review can be filed at the High Court. Mr. Mwita defined what happened to be negligence on side of the counsel for applicant. I have read the wise words on Elibariki Asseri Nnko vs Shifaya Mushi and Lewanga (1998) TLR 81 that; 'As the applicant had all the time been acting with diligence to ensure that his appeal is prosecuted but had run out of time because he, in his diligence, had lodged his appeal in the wrong court, the delay in lodging the appeal fell under the ambit of S. 21 of the Law of Limitation Act 1971, and there was good and sufficient cause for extending time to file the appeal in the proper court' Page 7 of 8 Further in Johan Harald Christer Abrahamsson vs Exim Bank & Others (Civil Application No. 224 of 2018) [2018] TZCA 261 (10 September 2018) it was held at page 8, that: - "...and that upon being struck out on that technical delay the applicant acted promptly "within two weeks" in bringing this present application. Since the Applicant was not idle but all along have been in this court pursuing an incompetent application, that by itself constitutes good cause. See also Robert Schelten vs, Balden Norataram and 2 Others, Civil Application No. 112 of 2016 On the strength of the reasons grounded for delay in the affidavit in support of the application, and his action of filing application within four days since the first application was withdrawn, I hold the view that reason adduced is sufficient for extension of time. That said and done, I hereby grant the application. The applicant is granted leave to file review within twenty-one days (21) from the date of this decision. I make no order as to costs. DATED at MUSOMA this 11th day of June, 2024. M. L. KOMBA Judge Page 8 of 8

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