

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CIVIL APPLICATION NO. 139/02 OF 2018

SELEMANI JABIRI APPLICANT

VERSUS

**1. HON. MARY CHATANDA
2. THE REGISTERED TRUSTEES OF
CHAMA CHA MAPINDUZI (CCM) }RESPONDENTS**

**(Application for extension of time to file an appeal from the Judgment and
Decree of the High Court of Tanzania
at Arusha)**

(Maghimbi, J.)

dated the 18th day of March, 2016

in

Civil Appeal No. 23 of 2015

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RULING

16th & 23rd August, 2019

KWARIKO, J. A.:

Before the Resident Magistrate's Court of Arusha, the applicant lost a suit for damages arising out of unlawful arrest and detention against the respondent. His appeal before the High Court was dismissed on 18/3/2016. Having been aggrieved by that decision, the applicant filed a notice of appeal to this Court on 24/3/2016 and requested to be supplied with a

copy of proceedings in the High Court. He was also granted leave to appeal to this Court on 3/7/2017.

The instant application which was filed on 14/2/2018 is for extension of time to file his appeal which has been brought by way of a notice of motion under Rules 10, 48 (1) and 49 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The notice of motion is supported by the affidavit of the applicant. Both in the notice of motion and the affidavit, the applicant advanced the ground for the delay to file his appeal to be the delay by the High Court to supply him with a copy of judgment, decree and proceedings which are essential documents to be included in the appeal. He averred that those documents were supplied to him on 7/2/2018 after elapse of the time to lodge an appeal. The applicant also filed his written submission in support of the application on 17/4/2018.

On the other hand, the respondent did not file any affidavit in reply. When the application was called on for hearing, the applicant appeared in person, unrepresented, whilst the respondent was represented by Dr. Ronilick Mchami, learned advocate.

When the applicant took the stage to argue his application, he adopted the notice of motion, the supporting affidavit and the written submission to be part of his oral submission. He added that, the delay was also contributed by lack of funds on his part to pay a lawyer to prepare this application. He prayed this application to be granted.

On his part, Dr. Mchami argued that the applicant ought to benefit from his letter to the Registrar to request the copy of the proceedings in the High Court. He argued that by virtue of Rule 90 of the Rules, the time within which the applicant used to wait for the proceedings ought to be excluded from computing the time limit to file the appeal. In the circumstances, argued Dr. Mchami, the applicant ought to have requested for a certificate of delay from the Registrar. He submitted that, because the applicant was not given the certificate of delay, the application is incompetent. The learned counsel contended that, the applicant is not time barred to file his appeal. He however argued that, should the Court find merit in the application, the same be granted without costs by the respondent. He prayed for the application to be dismissed with costs.

The applicant being a lay person, did not have anything useful to add in rejoinder. He left to the Court to decide.

I have considered the notice of motion, the supporting affidavit and the submissions from the parties. The issue for decision is whether the applicant has given good cause for the delay to file appeal. According to the law, a party seeking the Court to exercise its judicial discretion to grant the application for extension of time to do a certain thing, must show good cause for failing to do what he should have done within the prescribed time. Rule 10 of the Rules is relevant in that respect. It provides thus;

The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.

This Court has time and again insisted that the applicant should show good cause before time can be extended for them to do a certain act. Some of those decisions are; **Symbion Power Tanzania Limited v. Oilcom Tanzania Limited and Another**, Civil Application No. 497/01 of

2017 and **Innocent Paul Norbert v. Murzar Mills Limited**, Civil Application No. 444/18 of 2018 (both unreported).

The question to be asked now is, whether the applicant has shown good cause for this Court to exercise its discretion to grant extension of time to file the intended appeal. The applicant's main reason for the delay is that, the High Court delayed to supply him with a copy of the proceedings. On the other hand, the respondent has been emphatic that the applicant is not even time barred to file appeal because after he had requested to be supplied with the copy of the proceedings he was 'home and dry'. This is because the days during which he was waiting for the copy ought to be excluded from computation and the Registrar should have issued a certificate of delay to that effect. In that respect, Dr. Mchami argued that the application is incompetent because the applicant is not time barred to file appeal. Rule 90 (1) of the Rules provides thus: -

90.-(1) Subject to the provisions of Rule 128, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged with –

(a) a memorandum of appeal in quintuplicate;

- (b) the record of appeal in quintuplicate;*
- (c) security for the costs of the appeal;*

save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant.

The law is clear that the days required for preparation and delivery of the copy to the appellant ought to be excluded in computing the time within which to file an appeal. The exclusion ought to be done by the Registrar by issuing a certificate of delay. In the instant case, the Registrar did not issue the certificate and the applicant did not ask for it. However, the time of sixty (60) days within which to file the appeal elapsed long ago from the date the applicant was supplied with the copy on 7/2/2018. The applicant cannot now be directed to go back to the Registrar for the certificate of delay. First, it is a wastage of time and secondly, it cannot be guaranteed that the Registrar will issue the certificate.


In the circumstances, this Court is satisfied that the applicant has shown good cause for the delay to file appeal as he was waiting to be supplied with a copy of the proceedings in the High Court which he had promptly requested. Consequently, I find the application with merit and hereby grant it. The applicant should file his appeal within thirty (30) days from the date of delivery of this ruling. Costs to be in the cause.

DATED at **ARUSHA** this 22nd day of August, 2019.

M. A. KWARIKO
JUSTICE OF APPEAL

The Ruling delivered this 23rd day of August, 2019 in the presence of the Applicant in person and Dr. Ronilick Mchami for the Respondent is hereby certified as a true copy of the original.




A. H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL