

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

CIVIL APPLICATION NO. 325 /08 OF 2019

**AMANI GIRLS HOMEAPPLICANT
VERSUS
ISACK CHARLES KANELA.....RESPONDENT**

**(Application for extension of time to lodge a Notice of Appeal
from the Judgment of the High Court of Tanzania
at Mwanza)**

(Wambura, J.)

dated 26th day of February, 2014

**in
Revision No.24 of 2012**

RULING

6th & 11th December, 2019.

LEVIRA, J.A.:

By way of Notice of Motion filed under Rule 45A (1) (a) of the Court of Appeal Rules, 2009 (the Rules), the applicant, Amani Girls Home has filed this application seeking the indulgence of this Court to extend time for the applicant to lodge a notice of appeal. The applicant's previous application for extension of time (Misc. Application No.20 of 2017) was refused by the High Court (Ismail, J.) on 13th May, 2019 and hence, this second bite application. The notice of motion is supported by an affidavit deposed by Agripina John, the applicant's manager.

According to the affidavit supporting the application, the applicant was a loser in the High Court (Wambura, J) in Revision No.24 of 2012. Being aggrieved, on 10th day of March 2014 the applicant filed before the Court Civil Appeal No.66 of 2015. However, the said Appeal was struck out on 27th May, 2016 for being incompetent. After that order of the Court striking out the Appeal, the applicant had to lodge before the High Court (Nyerere, J.) Miscellaneous Application No.20 of 2016 seeking to file a notice of appeal out of time. The said application was also struck out for being incompetent. Undaunted, the applicant applied again for extension of time to the High Court (Ismail, J.) through Miscellaneous Application No.20 of 2017, but his application was dismissed for failure to meet the legal threshold set out for extension of time. Still eager to pursue the intended appeal, the applicant approached the Court seeking extension of time to file a notice of appeal as a second bite. This application is opposed by the respondent through his affidavit in reply.

At the hearing, the applicant was represented by Mr. Ludovic Joseph, learned advocate, whereas the respondent appeared in person/unrepresented. Before commencement of the hearing, the respondent brought to my attention that on 27th August, 2019 he filed a notice of

preliminary objection against this application but he prayed to withdraw it. His prayer was granted as there was no objection from the counsel for the applicant and thus hearing of the application proceeded as scheduled.

In his submission in support of the application, Mr. Joseph stated that the applicant intends to challenge the decision of the High Court in Revision No. 24 of 2012 delivered on 26th February, 2017. He argued that the respondent was not employed by the applicant and therefore, the said decision of the High Court was wrong. According to him, after the delivery of the decision of the High Court, the applicant has been taking various steps to object the same, including timely filling the notice of appeal which was struck out on technical grounds. He added that, the applicant made further attempts to pursue the intended appeal before the High Court, but her two applications were not successful and hence the current application.

Mr. Joseph submitted further that under paragraphs 10, 11 and 13 of the applicant's supporting affidavit, reasons for the delay have been stated to the effect that, at all times the applicant was very active in making a follow up of this matter diligently and that significant amount of time was lost in the Court corridors. According to him, the excusable human errors were contributed mainly by the applicant being a lay person.

Reinforcing his arguments, Mr. Joseph invited me to consider the decisions of the Court in **Zuberi Musa v. Shinyanga Town Council**, Civil Application No.3 of 2007 and **China Henan International Corporation Group v. Salvand K.A. Rwegasira**, Civil application No.43 of 2006 (both unreported).

Finally, the learned counsel contended that reasons for the delay advanced by the applicant constitute good cause within the purview of Rule 10 of the Rules. He thus urged the Court to grant the application.

In reply, the respondent strongly opposed the application submitting that human errors and ignorance of law are not good cause for the grant of extension of time. It was his argument that the applicant has failed to account for 53 days of the delay from the date when Civil Appeal No.66 of 2015 was struck out on 26th May, 2016 until on 19th July 2016 when she filed Miscellaneous Application No. 20 of 2016. He added that, the applicant's delay of five years from 26th February, 2014 when the decision of the High Court was delivered to the date of filling this application, that is 18th July, 2019 is inordinate and this application is nothing but a delaying tactic and an abuse of court process. According to

him, there is no possibility of success in the intended appeal and if this application will be granted, he will continue to suffer.

The respondent further stated that the application under discussion is incompetent for wrong citation of the appropriate Rule; that is, it ought to have been pegged under Rule 10 and not Rule 45A (1) (a) of the Rules.

Based on the above submissions, the respondent prayed that this application should be dismissed with costs.

In his brief rejoinder, Mr. Joseph argued that this application is properly pegged under the provisions of Rule 45A (1)(a) of the Rules because it was filed as a second bite.

Regarding the inordinate delay complained of by the respondent, Mr. Joseph reiterated that the applicant has been in Court corridors for all those days and he has succeeded in accounting for the delay.

Having considered the parties' submissions, the notice of motion and the supporting affidavit, the issue to be considered is whether or not the applicant has shown good cause to justify the extension of time sought.

Generally, applications for extension of time are made under Rule 10 of the Rules as rightly submitted by the respondent. In the instant

application, although the applicant is seeking extension of time as a second bite, he ought to have cited Rule 10 of the Rules as well because Rule 45A (1)(a) of the Rules cited by the applicant is supposed to be read together with the said Rule.

For clarity, Rule 10 of the Rules provides that:-

*"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 expiration of that time and 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.**"* [Emphasis added].

Rule 45A.-(1)(a) under which this application is brought provides that:-

- (1) 'Where an application for extension of time to:-
 - (a) lodge a notice of appeal;

is refused by the High Court, the applicant may within fourteen days of such decision apply to the Court for extension of time.' [Emphasis added].

The above quoted provisions are very clear, while Rule 10 requires 'good cause' to be shown by the applicant as a criteria to be considered by the Court to grant extension of time, Rule 45A (1) (a) is all about eligibility. In other words, a person is eligible to apply for extension of time as a second bite if his initial application was refused by the High Court. Therefore, the two provisions need to be read together.

That aside, it is my considered opinion that although the applicant herein was supposed to cite Rule 10 of the Rules in his application which he did not, the Court's jurisdiction to entertain this application has not been ousted by such failure. The law is settled, whenever such omission occurs the Court has power to order parties to inset the omitted provision in terms of Rule 48(1) of the Rules. For ease of reference, the proviso to Rule 48(1) of the Rules provides as follows:

"... Provided that where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction to grant the order sought exists, the

irregularity or omission can be ignored and the Court may order that the correct law be inserted.”

In the current application, the parties were recalled on 11th December, 2019 and after their brief submissions on the existence of the above quoted provision and upon their acknowledgement of what it requires, the Court overruled the objection and it ordered the applicant to insert Rule 10 of the Rules which was omitted in the notice of motion. In other words, Rule 48(1) of the Rules was complied with. Having so observed, I now proceed to consider the application on merit.

As stated earlier, the applicant who intends to move the Court to extend time for him to file a notice of appeal out of time is required to show good cause. However, what constitutes ‘good cause’ depends on the circumstances of each case. In **Osward Masatu Mwaizarubi v. Tanzania Fish Processing Ltd, Civil Application No.13 of 2010**, the Court held that:

*“...what constitutes good cause cannot be laid down by any hard and fast rules. The term **"good causes"** is a relative one and **is dependent upon the party seeking extension of time to provide the relevant material***

in order to move the court to exercise its discretion...” [Emphasis added].

In the instant application, one of the grounds relied upon by the applicant is that there were excusable human errors that led to her previous appeal and applications being unsuccessful largely contributed by her being a layperson. With respect, I am not persuaded by the applicant’s contention that human errors contributed by being a layperson constitute good cause in terms of Rule 10 of the Rules justifying extension of time. I agree with the respondent that this ground has no merit and I so hold.

Apart from that, the applicant has raised a controversial issue in paragraph 12 of his affidavit regarding the status of the respondent which was also emphasized by his counsel that, the respondent was not employed by the applicant. I wish to state that, since this is an application for extension of time the issue as to whether or not the decision of the trial court was erroneous on that aspect cannot be determined here. Therefore, it is my considered opinion that, the issue was raised out of context.

Regarding the days of delay, the applicant indicated in paragraphs 10, 11 and 13 of the supporting affidavit that she was very active in the courts’ corridors making follow up of this matter without any sign of negligence;

as a result, time was lost while in court corridors. As demonstrated herein above, it should be noted that the decision against which the applicant intends to challenge was delivered on 26th February, 2014 and her first appeal was struck out by the Court on 26th March, 2016. Thereafter, she filed an application for extension of time but the same was struck out on 27th October, 2017 for being incompetent. On 13th May, 2019 her second application for extension of time was dismissed. The current application was filed on 18th July, 2019. At last the Certificate of Delay was issued excluding the days from 14th May, 2019 when the applicant requested for the copy of ruling to 15th July, 2019 when she was notified that the documents were ready for collection. It is undisputed fact the instant application was filed on 18th July, 2019, two days after the applicant being notified that the ruling was ready for collection.

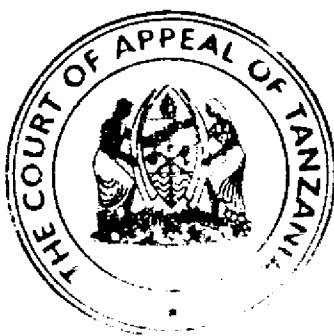
I am mindful of the stance held by the Court in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) that delay of even a single day, has to be accounted for. However, circumstances of the current application are different as the applicant was not idle but all along has been in court corridors tirelessly pursuing the intended appeal. I take note that immediately after the decision of the High


Court in Revision No. 24 of 2012 the applicant acted promptly trying to challenge the impugned decision. In the circumstances, I am of the considered view that for all the times the applicant acted diligently to pursue the intended appeal. Therefore, I am satisfied and it is my finding that the applicant has been able to show good cause warranting extension of time. Consequently, the application is hereby granted and the applicant is given fourteen (14) days from the date of this ruling to lodge a notice of appeal. Having considered circumstances of this application, I make no order as to costs.

DATED at MWANZA this 11th day of December, 2019.

M. C. LEVIRA
JUSTICE OF APPEAL

This Ruling delivered this 11th day of December, 2019 in the presence of Mr. Ludovick Joseph, counsel for the Applicant and Respondent in person, is hereby certified as a true copy of the original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL