

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 569/01 OF 2019**

**THE INTERNATIONAL  
AIRLINE OF THE UNITED ARAB EMIRATES .....APPLICANT**

**VERSUS**

**NASSOR NASSOR .....RESPONDENT**

**[Application for extension of time to serve the respondent with a record of  
appeal from the decision of the High Court of Tanzania,  
at Dar es Salaam]**

**(Mkasimongwa, J.)**

**dated the 4<sup>th</sup> day of April, 2016**

**in**

**Civil Appeal No. 67 of 2014**  
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**RULING**

8<sup>th</sup> & 17<sup>th</sup> February, 2021

**KWARIKO, J.A.:**

The applicant was aggrieved by the decision of the High Court of Tanzania at Dar es Salaam District Registry dated 4<sup>th</sup> April, 2016 in Civil Appeal No. 67 of 2014 in which the respondent won. Following that decision, the applicant came to this Court with an appeal vide Civil Appeal No. 379 of 2019.

However, the applicant was late to serve the respondent with the record of appeal as required under Rule 97 (1) of the Tanzania Court of

Appeal Rules, 2009 as amended (hereinafter the Rules). By a notice of motion taken under Rules 10 and 2 of the Rules, the applicant filed this application seeking for extension of time to serve the respondent with the record of appeal. The notice of motion is supported by an affidavit of Joseph Sang'udi, counsel for the applicant.

It has been deposed in the affidavit that the respondent deliberately avoided to be served with the record of appeal. This is so because on 23<sup>rd</sup> December, 2019 which was the last day for the service, at 11:24hours, Mr. Sang'udi communicated with the respondent through his mobile phone No. 0784720760 and the respondent's phone No. 0784342193 for direction on how he could be reached for service as he had not provided his physical address. The respondent directed for the process server to be furnished with his phone number for direction on how to reach him. This was done but when the process server, one Bakari Msagati, phoned the respondent on the same date, he said he had travelled to Horohoro.

As time was running out, the process server made efforts and located the residence of the respondent and when he wanted to serve his wife, the respondent directed that he should wait for him. The

process server waited for the respondent's arrival to no avail and at dusk, he decided to leave. The respondent was served at 9:00hrs on 24<sup>th</sup> December, 2019 which was beyond seven days upon which he ought to have been served.

The applicant deponed further that, had it not been for the respondent's avoidance of service, the applicant would not have been time barred to serve him. Additionally, the deponent averred that there is illegality in the impugned decision to the effect that when the High Court Judge decided the appeal, he was *functus officio* which is also good cause for extension of time.

In opposition to the application, the respondent filed an affidavit in reply where he averred that he was contacted by Mr. Sang'udi for the first time on 24/12/2019 in which he had travelled to Horohoro and was served on that date. He denied to have avoided service on 23/12/2019. The respondent deponed further that the applicant has neither given reasons for the delay nor explained the reasons for not serving him with the record of appeal between 16/12/2019 and 23/12/2019. He finally averred that the impugned decision does not contain any illegality.

At the hearing of the application, the applicant was represented by Mr. Joseph Sang'udi, learned advocate while the respondent appeared in person, unrepresented. In arguing the application, both parties reiterated the averments in their respective affidavits for and against the application.

Following the parties' submissions, the issue which calls for the Court's determination is whether the application has merit. It is trite that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time. Rule 10 of the Rules is relevant in that respect where 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".*

In its various decisions, this Court has had occasions to interpret this provision of the law and insisted that the applicant should show

good cause before time can be extended for doing a certain act. Few of such decisions are; **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application no. 4 of 2014 (both unreported).

However, what constitutes good cause has not been codified although this Court has, in various instances, stated a number of factors to be considered. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant. (See for instance the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001, **Tauka Theodory Ferdinand v. Eva Zakayo Mwita (As Administratrix of the Estate of the Late Albanus Mwita)**, Civil Application No. 300/17 of 2016 and **Wambura N.J. Waryuba v. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 (all 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. The applicant has attributed the delay to the respondent's avoidance of service on 23/12/2019 which was the last day upon which

the respondent was supposed to be served. It has been argued that the respondent who had welcomed the service, could not be available when the process server was ready to serve him and did not show up at his residence on that day until dusk when he left.

On his part, the respondent maintained that he was contacted by Mr. Sangúdi on 24/12/2019 whilst he had travelled to Horohoro and that he was served on the same day which was beyond the prescribed period. He denied to have avoided service.

This court has considered the rival submissions and is of the view that the applicant's account is, on a balance of probabilities, more plausible for the following reasons. **One;** the respondent has not controverted the evidence given by the process server that he visited the residence of the respondent on 23/12/2019 for the purpose of serving him but he could not show up despite the promise that he should wait for him. Moreover, the respondent did not explain his whereabouts on that date. This proves that the process server visited the respondent's residence on 23/12/2019 for service but he was not there as promised. **Two;** at paragraph 6 of the affidavit in reply, the respondent disputed to have communicated with Mr. Sangúdi on

23/12/2019 claiming that he was called on 24/12/2019 whilst he had travelled to Horohoro and was served on the same day. The question to be asked is how the respondent could have been served on 24/12/2019 while he was away to Horohoro? The answer to this question is not far-fetched. This suggests that the respondent was, deliberately not available at home on 23/12/2019 which made it impossible for him to be served.

It is settled law that in an application for extension of time to do an act, the applicant is supposed to account for each day of delay. Some of this Court's decisions to that effect include the cases of **Ludger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 and **Mpoki Lutengano Mwakabuta v. Jane Jonathan (As Legal Representative of the Late Simon Mperasoka-Deceased)**, Civil Application No. 566/01 of 2018 (both unreported). For instance, in the former case the Court stated thus:

*"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application."*

From the observation made above, it goes without saying that the applicant made effort to serve the respondent within time but he failed to do so not on his own accord but due to the respondent's evasive manner as explained above. The applicant has accounted for the delay of one day which by any standard is not inordinate delay.

The respondent complained further that the applicant has not shown reason why he failed to serve him between 16/12/2019 and 23/12/2019 only to look for him on the last day. The answer to this is very simple. According to Rule 97 (1) of the Rules, the applicant had seven days to serve the respondent with the record of appeal reckoning from 16/12/2019 and expired on 23/12/2019. It means that the applicant was at liberty to serve the respondent at any date before the expiry of the seven days and he made effort to effect service on the seventh day but the same was frustrated by the respondent. Moreover, the respondent's complaint is not backed up by any provision of law. In the premises, I do not find it legally appropriate to blame the applicant for deciding to effect service on the last day.

Following the applicant's explanation for the delay, I find no reason to deal with the issue of illegality which he raised, for doing so



will not change the outcome of the application. The determination of the point is therefore reserved for another opportune moment.

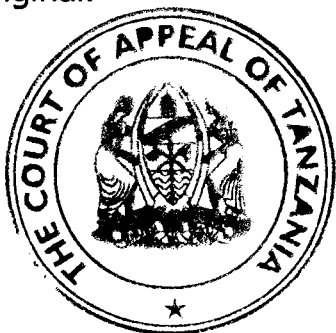
Finally, I am settled in mind that the applicant has shown good cause for the delay and has accounted for the one-day delay. Thus, the application has merit and it is hereby granted. The applicant is given seven days from the date of delivery of this ruling within which to serve the respondent with the record of appeal. Costs of this application to abide by the outcome of the appeal.

Order accordingly.

**DATED at DAR ES SALAAM** this 15<sup>th</sup> day of February, 2021.

M. A. KWARIKO  
**JUSTICE OF APPEAL**

This ruling delivered this 17<sup>th</sup> day of February, 2021 in the presence of Mr. Joseph Sang'udi, learned counsel for the Applicant and in the absence of the Respondent, is hereby certified as a true copy of original.



*S. J. Kainda*  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**