

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

CIVIL APPLICATION NO. 18/01 OF 2021

THE CONCERN FOR DEVELOPMENT

INITIATIVES IN AFRICA (For DIA).....1st APPLICANT

BUBELWA KAIZA.....2nd APPLICANT

VERUS

AMBERO CONSULTING (Gessellschaft mbH).....1st RESPONDENT

TANZANIA ASSOCIATION OF NON-GOVERNMENTAL

ORGANISATIONS (TANGO).....2nd RESPONDENT

**(Application for Extension of Time to appeal against the Judgment and
Decree of the High Court of Tanzania at Dar es Salaam)**

(Ebrahim, J.)

dated the 24th day of July, 2020

in

Civil Case No. 26 of 2017

.....

RULING

17th February & 10th March, 2023.

FIKIRINI, J.A.:

The applicants, were plaintiffs before the High Court in Civil Case No. 26 of 2017, and sued the respondents, then the defendants, for breach of contract. After a full hearing and judgment delivered on 24th July, 2020, the applicants lost, and aggrieved, they preferred an appeal

to this Court. A notice of appeal was lodged on 20th August, 2020, and the letter requesting copies of the judgment, decree, and proceedings. On 18th November, 2020, the applicants were informed that the certified copies of proceedings, judgment, decree, and exhibits were ready for collection. The documents were collected on 23rd November, 2020, and the certificate of delay was received. Counting from when the documents were ready, the memorandum of appeal should have been lodged by or on 11th January, 2021 or around that time.

Noting that the time to lodge appeal had expired, this application by way of notice of motion preferred under rule 10 of the Court of Appeal Rules, 2009, seeking for extension of time, was envisaged. The affidavit sworn by Bubelwa Kaiza, the second respondent, supported the application, in which he explained the delay, particularly in paragraphs 6, 7, 8, 9, 10, 11, 12, and 13. Also, written submission was filed on 29th March, 2021.

Ms. Samah Salah deponed an affidavit on behalf of the first respondent, contesting the grant of the application asserting that no

good cause has been shown. She specifically opposed averment in paragraphs 5, 7, 8, 9, 10, 11, 12, 13, and 14 of the affidavit in support. The second respondent neither filed an affidavit in reply nor a written submission.

On the 17th February, 2023, the date scheduled for hearing of the application, Mr. Alphonse Katemi and Ms. Miriam Bachuba learned advocates appeared for their respective parties, while Mr. Adamson Nsimba, acting executive director of the second respondent, entered appearance on behalf.

Expounding on the reasons given to support the application, Mr. Katema prefaced his submission by adopting the notice of motion, affidavit, and written submission filed to support the application for extension of time. He also made a few remarks about the list of authorities filed by the first respondent's counsel. Canvassing through the cases, Mr. Katemi argued that all were irrelevant to the application. Going through each of them, starting with **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported), he

contended that the Court declined extension of time because of ignorance of law stated as the reason, which is not the case at hand. The referred case did, therefore, not fit the situation in the application presently before the Court. In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of the Young Women Association of Tanzania**, Civil Application No. 2 of 2010, it was his submission that the application was declined as the applicant failed to account for the delay. The same was the reason for the declining extension of time in **Zito Zuberi & 2 Others v. The Attorney General**, Civil Application No. 365/01 of 2019. Also, the Court stated that illegality or irregularity not ground for the grant of the extension of time. In **Karibu Textile Mills Ltd. v. The Commissioner General of Tanzania Revenue Authority**, Civil Application No. 192 of 2016, failure to account for each day of the delay was why the Court declined to grant the application.

Reacting to the submission Ms. Bachuba apart from adopting Ms. Salah's affidavit in reply and the written submission filed on 21st April, 2021 to be part of her submission, countered Mr. Katema's submission

by stating that all cases cited were relevant as they have stated the principles to be adhered to in considering the application filed under rule 10 of the Rules, regardless of what where the outcomes in the cited cases.

Given the details in the present application, Ms. Bachuba argued that the applicants had failed to show good cause to warrant the grant of the application. No account of each day of the delay was given from when the applicants were informed of the readiness of the documents on 18th November, 2020 up to 29th January, 2021, when this application was lodged. She underscored that the reasons advanced clearly showed the applicants were negligent and did not act diligently.

Based on her submission, she opposed the grant of the application and prayed for its dismissal with costs.

The second respondent fully supported the submission made by Ms. Bachuba.

Briefly rejoining, Mr. Katema contended that there is no list of what constitutes good or sufficient cause, and each case depends on its

own circumstances. He further submitted that the applicant had listed sickness as what delayed him in filing the appeal; otherwise, he accounted for the day of the delays.

On the strength of his submission, he prayed for the grant of the application.

I would wish to start by stressing two principles, that court orders must be obeyed and that there has to be substantial material placed before the court to allow the grant of the application before it.

In the case of **Ratman v. Cumarasamy and Another** (1964) 3 All ER, the Court stressed obeying rules. This is what the Court stated:

“The rules of court must be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to 6 an extension of time which would defeat the purpose of the rules, which is to provide a time

table for the conduct of litigation.” [Emphasis added]

The above decision was echoed in **Mbogo v. Shah** [1968] E.A 93, which stated as follows:

“All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, and the degree of prejudice to the respondent or defendant if time is extended.”

The list is not exhaustive, but the guidelines have been derived from the above-stated principles. And the said guidelines have been well embodied in our rule 10 of the Rules. That this Court is vested with unfettered discretionary powers to grant extension of time. However, those discretionary powers must be judiciously exercised according to the rules of reason and justice, not personal whims. Rule 10 provides:-

*“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."

The pertinent question to be answered is whether the applicants have shown good or sufficient cause to warrant the application grant. There is no dispute that after the judgment was delivered on 24th July, 2020, the applicants lodged their notice of appeal and requested to be supplied with certified copies of the proceedings, judgment, decree, and exhibits. The requested documents were ready for collection as avowed in paragraph 5 of the affidavit on 18th November, 2020. For reasons not explained, those documents were not collected until 23rd November, 2020, which was almost six (6) days later.

After collecting the documents, nothing seemed to have occurred between 23rd November, 2020 and 29th January, 2021 when this application was preferred. As stated in paragraph 6, on the 2nd January, 2021, the second respondent travelled to Bukoba on private transport.

He expected to be there for a week but fell sick, as explained in paragraphs 7, 8, and 9. After slightly recovering, he travelled back to Dar es Salaam, as deponed in paragraph 10. While sickness can be considered a good or sufficient cause, I decline to consider it a good or sufficient case in this application for the reasons hereinunder.

In the **Lyamuya Construction Company Ltd.** (supra), among the guidelines illustrated to warrant the grant of extension of time were:-

"(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy,

negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged,"

In the present application, apart from the inordinate delay, the applicants had failed to account for the period from 18th November, 2020, when they were informed the documents were ready for collection, up to 29th January, 2021, when the second applicant travelled to Bukoba. In addition, besides the bus ticket annexed to the affidavit marked "D," there was nothing else to substantiate the second applicant's alleged sickness.

Moreover, there was no explanation given as to why the first applicant could not take steps and process the appeal right after securing the necessary documents and upon learning of the second applicant's sickness while in Bukoba.

The applicants failed to show good or sufficient cause for the delay. At most, I noted sloppiness and lack of diligence. In that regard, I entirely agree with the respondents' submission objecting to the grant of the application for extension of time. All the cases referred, though contested by Mr. Katema but aptly illustrated the requirements to be fulfilled before an application of this nature is granted.

In short, I find this application is without merit. The applicants have failed to convince me that they have established good or sufficient cause after being unable to account for their inordinate delay and failing to account for each day of their delay.

Thus, for the above reasons, I dismiss this application with costs.

It is so ordered.

DATED at DAR ES SALAAM this 8th day of March, 2023.

P. S. FIKIRINI

JUSTICE OF APPEAL

The Ruling delivered this 10th day of March, 2023 in the presence of Mr. Alphonse Katemi, learned counsel for the Applicant and Ms. Lilian Mawalla, learned counsel for the 1st Respondent also holding brief of Mr. Richard Msimba the 2nd Respondent, is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL