

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

CIVIL APPLICATION NO. 71/02 OF 2023

NYANZA ELIAS KOROTO.....APPLICANT

VERSUS

GODFREY MSUGURI RESPONDENT

**(Application for extension of time from the ruling and order of the High
Court of Tanzania at Arusha)**

(Masara, J.)

dated 17th day of December, 2020

in

Miscellaneous Civil Application No. 23 of 2020

.....

RULING

8th & 14th November, 2023

MGONYA. J.A.:

This is an application for extension of time within which the applicant herein can file a Notice of Appeal out of time in Miscellaneous Civil Application No. 23 of 2020 dated 17th December, 2020. The application has been preferred under Rules 4 (2), (b), 10, 47, and 48 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules) through a notice of motion supported by an affidavit of **NYANZA ELIAS KOROTO** the applicant herein.

Briefly, the reasons leading to this application as garnered from the affidavit in support of the application can be observed in three major points, thus; First, there were some irregularities from original Civil Case No. 29/2018 at the Hanang Primary Court. In this respect the applicant mentioned four points irregularities. Further, in paragraph 16 of the supporting affidavit, that the applicant has been encountered with deep pocket constraints that incapacitated his movements from Hanang to Arusha for presenting his Notice of Appeal. Lastly is the reason seen under paragraph 17 where it is the applicant's assertion that he had been under parental obligations and custody for his livelihood and immediate necessities.

At the hearing of the application, it was Mr. Erick Erasmus Mbeya the learned counsel who represented the applicant, while the respondent was represented by Mr. Sylvester Kahunduka the learned counsel. The record reveals that the respondent did not file any reply to the affidavit. However, before hearing, Mr. Kahunduka prayed the Court leave to submit before the Court only points of law in respect of opposing the application.

When Mr. Mbeya was called upon to submit of the application, briefly prayed the Court to grant the prayers sought as they appear in item (i) and (ii) of the Notice of Motion and consider the specific grounds cumulatively pleaded under paragraphs 5 to 28 of the supporting affidavit. He thus prayed the Court to grant the application as prayed.

In reply to Mr. Mbeya's submission, Mr. Kahanduka directly contended that, in dealing with this application, the Court should be guided by the principles gathered in the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 in granting or not granting the prayer for extension of time sought by the applicant. Submitting further, the learned counsel referred this Court to page 6-7 of the said ruling where the Court set four guidelines; thus: **first**, the applicant must account for all period of delay; **second** that, the delay shall not be ordinate; **third**, that the applicant must show diligence and not empathy, negligence or sloppiness in the prosecution of the action that he intends

to take; and **fourth**, that if the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance; such as the legality of the decision sought to be challenged.

Submitting further, Mr. Kahunduka referred this Court to the applicant's affidavit at para 24 (i) - (iv), where the applicant has mentioned a number of illegalities wishes the Court to take into consideration in extending time. It is the learned counsel's concern that, the said illegalities were just listed or rather mentioned but not elaborated by the applicant and they are not apparent on the face of record. Mr. Kahunduka further submitted that, for the same to be considered as good reason for extension of time, they must be apparent on the face of record and processes in establishing them. The learned counsel referred the Court to our decisions in the case of **Mteingei Mohamed v. Blandina Macha**, Civil Application No. 344/17/2022 at page 9; taking into account the case of **William Kasian Nchimbi and 3 Others v. Abbas Vodacom Sekapala and Others**, Civil Reference No. 2 of 2015 where we held that illegality cannot be used as a shield to hide against on the part of the applicants. The learned counsel

declared to have understood that, even if there was an illegality, the time used before coming back to Court must be accounted for, and should be taken into account, hence the time of one year in this application, should be accounted to.

In conclusion, Mr. Kahunduka was of the opinion that, there is no good reason advanced in extending time, hence prayed the application be dismissed with costs.

Rejoinding, Mr. Mbeya was of the view that the respondents' counsel submission should be disregarded as the applicant has good cause demonstrated for his delay as submitted in his affidavit. Further, on the issue of illegalities read together with annexure NEK 4 at page 4, it is Mr. Mbeya assertion that, there is no proof that the applicant was idle and negligent in pursuing his matter before the courts of law. He thus reiterated his advanced prayer that this application be granted.

I have given due consideration to the rival arguments made by both parties' learned counsel on whether or not good cause has been shown by the applicant to warrant the extension of time.

It is a well-known fact that the Court has discretion to grant extension of time upon good cause shown. Such power is bestowed by rule 10 of the Rules. Although there is no straight definition of the phrase "good cause" so as to guide the Court in exercising its discretion to enlarge time under Rule 10. The Court always considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged. See: **Lyamuya Construction Company Limited (supra); Omary Ally Nyamalege (As the Administrator of the estate of the late Seleman Ally Nyamalege) & Others v. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017, **Benjamin H. Ndesario T/A Harambee Bus Services/ Ub 40 Bus Service v. M/S Rahisi General Marchant Ltd. & Another**, Civil Application No. 265/05 of 2020; **Loshilu Karaine and Three Others v. Abraham Melkizedeck Kaaya (suing 3 as Legal Representative of Gladness Kaaya)**, Civil Application No. 140/02 of 2018; **Tanga Cement Company Limited v. Jumanne D.**

Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001 and **Henry Muyaga vs. Tanzania Telecommunication Company Ltd**, Civil Application No. 8 of 2011 (all unreported). In the latter case the Court observed that:

*"The discretion of the Court to extend time under Rule 10 is unfettered' but has also been held that, in considering an application under the Rule, the Court may take into consideration such factors as, the length of the delay, the reason for the delay, the chances of success of the intended appeal and the degree of prejudice that the respondent may suffer if the application is granted. [See **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Civil Applications No. 4 of 2009 and 9 of 2008 (unreported)]."*

In determination of this application therefore, I will be guided with the above principles of law.

From the applicant's affidavit and submission, one of the reasons for the applicant's delay to file appeal within time was financial constraint. Unfortunate, I have to say that legally, this is not the good

cause for granting this kind of application. This was well stated in the cases of **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016; **Hamisi Mponda v. Niko Insurance Tanzania Limited & Two Others**, Civil Application No. 254/01 of 2021 and **Constantine Victor John v. Muhimbili National Hospital**, Civil Application No. 214/18 of 2020. In the latter, it was stated that:

*"In the case at hand, the applicant was on legal aid and deposed at para 8 of the affidavit that he was unemployed since 25/09/2009 when the respondent terminated his employment. He has deposed at para 9 reproduced above that he could not timely file the application for review which was withdrawn because of financial constraints. As observed in **Yusufu Same** (supra) in the excerpt reproduced above, financial constraints may not be a sufficient ground for extension of time. However, as observed in the same excerpt, there are exceptional circumstances when it can be sufficient. In that case, the person seeking extension of time was a widow on legal aid. It*

*was observed that, in such circumstances, **her plea of financial constraints could not be held to be insignificant.** I have the same sentiments here. In the case at hand, the applicant, was equally on legal aid. On the authority of **Yusufu Same** (supra), **his plea of financial constraints cannot be taken to be insignificant.** I take it as sufficiently demonstrated that the applicant's delay is exceptionally excusable".*

Coming to the point of prayer sought, I am warned to include financial constraint as said earlier to be a sufficient reason for the Court to enlarge time. For proper and timely administration of justice there must be strict deadlines in filling legal documents. The deadlines are set to maintain order and efficiency in the legal process. Therefore, there must be genuine reasons which prevents someone from meeting a dead line of which financial constraint is not among those reasons. The circumstance of this application is nothing than lack of diligence and apathy hence no excuse on that.

Further, as indicated in the applicant's affidavit through paragraph 11 of the same, the applicant indicated earlier that the ruling in Miscellaneous Civil Application No. 23 Of 2023 subject to this application entailed some illegalities. As submitted by the learned counsel Kahunduka, the said points of illegalities were not explained or rather elaborated neither in the affidavit nor during submissions. In this way, it is obvious hard to understand the gist of the said illegalities, save for the applicant himself. In lack of explanation, it is as good as the same have never been neither pleaded nor submitted. Therefore, it is from this shortcoming I'm forced to believe that the alleged irregularities came to the applicant's counsel as an afterthought in his struggle to persuade this Court to extend the time.

As law requires, before filing an appeal the respondent is supplied with a copy of notice within 30 days. The intention of the notice is to alert that the other party was aggrieved with the decision hence something is going on before the Court. With those facts, as submitted by Mr. Kahunduka for the respondent, the circumstance of this application reveals nothing but negligence.

All said and done, I find no sufficient reason established by the applicant warranting this Court to extend the time. Henceforth, I find no merit in the application and I dismiss it with costs.

Ordered accordingly.

DATED at **ARUSHA** this 14th day of November, 2023.

L. E. MGONYA
JUSTICE OF APPEAL

The Ruling delivered this 14th day of November, 2023 in the presence of Mr. Sylvester Kahunduka, learned counsel for the respondent who took brief for Mr. Erick Mbeya, learned counsel for the applicant, is hereby certified as a true copy of the original.


A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL