

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

**CIVIL APPLICATION NO. 254/01 OF 2021**

**HAMISI MPONDA.....APPLICANT**

**VERSUS**

**NIKO INSURANCE TANZANIA LIMITED.....1<sup>st</sup> RESPONDENT**

**OMARY ABDALLAH KILINDI.....2<sup>nd</sup> RESPONDENT**

**JUMA SELEMANI MPINDO.....3<sup>rd</sup> RESPONDENT**

**(Application for extension of time to file an application for leave to appeal  
from the decision of the High Court of Tanzania at Dar es Salaam)  
(Luvanda, J.)**

**dated the 29<sup>th</sup> day of April, 2019**

**in**

**Civil Appeal No. 179 of 2019**

.....

**RULING**

20<sup>th</sup> Feb., & 10<sup>th</sup> May, 2023.

**SEHEL, J.A.:**

The applicant, Hamisi Mponda, through the legal assistance of Joyce Sojo, learned advocate from a Non-Government Organization going with the name of 'Legal Assistance to Victims of Accidents', filed the present application seeking an extension of time within which to apply leave to appeal to the Court from the decision of the High Court of Tanzania, Dar es

Salaam District Registry at Dar es Salaam dated 29<sup>th</sup> day of April, 2019 in Civil Appeal No. 179 of 2019. The notice of motion for the application is preferred under Rules 10, 45A (1) (b) and 48 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules) and supported by the affidavit deposed by Joyce Sojo, learned counsel for the applicant. The application is opposed by the 1<sup>st</sup> respondent through an affidavit in reply deposed by one Mudhihir Athumani Magee, learned advocate for the 1<sup>st</sup> respondent. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents did not file the affidavit in reply.

The background facts leading to the instant application are such that: on 8<sup>th</sup> February, 2011 along Kilwa Road at Dundani Village in Mkuranga District, the applicant was knocked down by a motor vehicle make Mitsubishi canter, a property of the 3<sup>rd</sup> respondent and insured by the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent was driving that motor vehicle. That accident led to the incapacitation of the applicant who now moves crawling. Following the injuries he sustained, the applicant instituted a civil suit, Civil Case No. 66 of 2016 before the Court of the Resident Magistrate at Kisutu against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents seeking compensation. The judgment was entered in favour of the applicant. Being aggrieved, the

1<sup>st</sup> respondent successfully appealed before the High Court that quashed and set aside the decision of the Court of the Resident Magistrate on account that the suit was time barred. The applicant was dissatisfied with such decision. He timely lodged his notice of appeal. However, he was late to apply for leave to appeal to the Court. He thus approached the High Court for an extension of time to apply for leave to appeal to the Court on grounds that he was belatedly supplied with the copies of proceedings, judgment and decree, and that, he was financially constrained. The High Court found that the copies were supplied to the applicant on 13<sup>th</sup> June, 2019, and that, financial constraint was not a good reason for extension of time. Accordingly, it dismissed the application. The applicant has now filed the instant application as a second bite.

According to the notice of motion and the supporting affidavit, the application is premised on a ground that the applicant faced financial constrain.

At the hearing of the application, Ms. Joyce Sojo assisted by Elisa Mdeme, both learned advocates appeared for the applicant, whereas the 1<sup>st</sup> respondent had the legal services of Mr. Mudhihir Magee, also learned

advocate. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents were absent despite being duly served through publication in Mwananchi newspaper of 23<sup>rd</sup> January, 2023 thus hearing of the application proceeded in their absence in terms of Rule 63 of the Rules.

Ms. Sojo begun her submission by adopting the notice of motion, the supporting affidavit and the written submissions earlier filed in support of the application as part of his oral submission. Expounding the reason of financial incapacity, Ms. Sojo argued that the applicant who is physically incapacitated by the accident could not make a close follow up of his intention to appeal. She further argued that as the applicant was physically incapacitated hence became pauper because he is unable to work to earn a living. For that reason, she contended, the applicant struggled to secure filing fees hence time run out against him in filing the application for leave. Relying on the decision of this Court in the case of **Constantine Victor John v. Muhimbili National Hospital**, Civil Application No. 214/18 of 2020 [2021] TZCA 77; [17 March, 2021, TANZLII], Ms. Sojo implored me to find that financial constraint is a good cause for the Court to extend the extension of time sought by the applicant and grant the same.

In reply, Mr. Magee adopted the affidavit in reply and the reply written submissions filed in opposition of the application for extension of time. Responding to the submission that financial constraint is a good cause, the learned counsel for the 1<sup>st</sup> respondent contended that it is only in exceptional circumstances where financial hardship may be considered sufficient cause for the grant of the extension of time. He reiterated his submission by referring me to the case of **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016 [2018] TZCA 39; [06 August, 2018, TANZLII] and the case cited by the counsel for the applicant, that is, **Constantine Victor John v. Muhimbili National Hospital** (supra), specifically at page 12 where it was stated that:

*"...financial constraints may not be a sufficient ground for extension of time. however, ... there are exceptional circumstance when it can be sufficient."*

In conclusion, Mr. Magee urged me to dismiss the application with costs.

Ms. Sojo briefly rejoined that the case of **Constantine Victor John v. Muhimbili National Hospital** (supra) is the recent decision.

Having heard the rival contentions of the parties' counsel, the issue that stands out for my determination is whether financial constraint is among the good cause for the Court to exercise its discretionary power to extend time to apply for leave to appeal to the Court.

Rule 10 of the Rules requires the applicant to show good cause to warrant the Court exercise its discretion to extend time for the doing of any act authorized or required by the Rules. Rule 45 (b) of the Rules requires a party seeking leave to appeal to lodge the application within fourteen (14) days from the decision against which it is desired to appeal. As stated earlier, the applicant failed to lodge the application within the time prescribed. He therefore, first, approached the High Court. However, the High Court refused to grant him the sought extension. Following such refusal, the applicant came to this Court, on a second bite application with a reason that he faced financial hardship to secure fund for filing fees.

Indeed, in **Wambele Mtumwa Shahame v. Mohamed Hamis** (supra), the Court held that financial constraint is not a sufficient reason for extending time.

Nevertheless, in the case of **Yusufu Same & Another v. Hadija Yusufu**, Civil Application No. 1 of 2002 (unreported) while acknowledging that financial hardship is not a good cause, the Court held that there are certain circumstances where it may accept such reason. It stated:

*"It should be observed that the term sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or cases which are outside the applicant's power to control or influence resulting in delay in taking any necessary step... As for the period from 29.11.1996 when the application for leave was dismissed by Bahati J. up to 3.1.1997 when the application leading to this appeal was lodged, the explanation by the respondent is based mainly on her numerous shuttles between Dar es Salaam where the court records were and Moshi where her counsel was based, coupled with poverty. **We are aware that financial constraint is not sufficient ground for extension of time. see Zabitis Kawuka v. Abdui Karim (EAC) Civil Appeal No. 18 of 1937. But in the circumstance of this case at hand, where the respondent was a widow depending on legal aid, her plea***

***for financial constrain cannot be held to be insignificant."***

*[Emphasis added]*

It follows that, generally, financial constraint is not a good cause but in exceptional circumstances, such as, an applicant is a widow and depends solely on legal aid, the Court may accept it as a good cause for extension of time.

In the present application, as gathered from the facts of the application, the applicant cannot work for gain due to his incapacitation and that he depends on legal aid to move the legal process. Taking into account the prevailing circumstance, I find that the applicant falls under the exception to the general rule that financial constraint, in this application, is sufficient cause to warrant the sought extension of time.

In the end, the application has merit. Accordingly, I grant the applicant the extension of time within which to file an application for leave to appeal to the Court from the decision of the High Court in Civil Appeal No. 179 of 2018 dated 29<sup>th</sup> April, 2019. The applicant is granted fourteen (14) days counted from the date of delivery of this ruling within which to



lodge the application for leave. Costs shall abide to the outcome of the application for leave.


It is so ordered.

**DATED at Dar es Salaam this 5<sup>th</sup> day of May, 2023.**

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

The Ruling delivered this 10<sup>th</sup> day of May, 2023 in the presence of Ms. Janeth Shayo, learned counsel for the applicant, Mr. Mudhihir Magee, learned counsel for the 1<sup>st</sup> respondent and in absence of the 2<sup>nd</sup> & 3<sup>rd</sup> respondents, is hereby certified as a true copy of the original.



  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**