

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 378/01 OF 2020

CHARLES ZEPHANIA MWENESANOAPPLICANT

VERSUS

DANIEL SAMWEL CHUMARESPONDENT

**(Application for Extension of Time to amend the Notice of Motion by citing
the proper Enabling Provisions of the Law)**

(Mussa, J.A)

Dated 20th May, 2016

in

Civil Application No. 274 of 2015

.....

RULING

6th February & 8th March, 2023

RUMANYIKA, J.A.:

By way of Notice of Motion premised under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), Charles Zephania Mwenesano, the applicant is seeking an extension of time to amend Notice of Motion in Application No. 184 of 2016 pursuant to court order, at the instance of Advocate Ukwong'a marked withdrawn on 28/4/2020 for wrong citation of the enabling provisions of the law. However, the applicant was given 30 days if wished to re-file it. He complied with the order save for some extraneous dispositions introduced in the supporting affidavit

for which reason he withdrew the application. The application is supported by an affidavit of Charles Zephania Mwenesano. Daniel Samwel Chuma, the respondent did not file an affidavit in reply to oppose it.

At the hearing of the application on 6/02/2023, Mr. Ukwong'a and Tasinga, learned counsel appeared for the applicant and the respondent respectively.

Relaying on the applicant's written submission filed on 09/11/2020 and the contents of the supporting affidavit, Mr. Ukwong'a contended that, initially, the applicant had instituted Application No. 274 of 2015 which turned out to be incompetent for wrong citation of the enabling provisions of the law. On that account he withdrew it on 28/4/2020 with liberty to refile it within thirty days of the withdrawal, if he wished. Pursuant to that order, he filed Application No. 184 of 2016, However, as it transpired in Court that, an affidavit supporting the application contained extraneous depositions as appearing at paragraphs 15 and 16 and contravened the Court order, the applicant withdrew it on 25/08/2020. Still, he is desirous of pursuing his right but for the time bar, hence the present application. To wind up, Mr. Ukwong'a averred

that, the applicant had shown good cause to justify the delay therefore. deserved an extension of time.

He urged me to dispense with the requirement of accounting for each day of the delay because of the peculiarity of the matter more so what the applicant intends to achieve. To fortify his argument he cited the Court's decision in the case of **Alhaj Abdallah Tarib v. Eshakwe Ndoto Kiweni Mushi (1990)** T.L.R. 180.

In reply, Mr. Tasinga relied on his written submission filed on 24/11/2020. He confined himself to points of law only because the respondent had not filed an affidavit in reply to oppose the application. He contended that, the applicant had not shown good cause which is the threshold required for the grant of an order of extension of time. He added that, the applicant had failed to account for each day of the delay counted from 28/04/2020 when he was given thirty days to come back and 10/09/2020 when he lodged the present application. He averred further that, all the time the applicant had the legal service of advocate whose illness or negligence could not constitute good cause. To bolster his point he cited our unreported decision in **Alhaji Abdallah** (supra) and asked me to dismiss the application.

Having read the record sufficiently and considered the learned counsel's submissions, the issue before me for determination is whether the applicant has shown good cause for the grant of extension of time, as provided under rule 10 of the Rules as the Court stated in a number of cases including **Vodacom Foundation v. Commissioner General TRA**, Civil Application No. 107/2017 and **Laureno Mseya v. R**, Criminal Appeal No. 4/06 of 2016 (both unreported). In the later case for instance, we stated that:

" the decisions whether or not to grant the application for extension of time under rule 10 of the Rules is dependent upon the party seeking such an order assigning sufficient cause for having not done what ought to have been done within the time prescribed by the relevant statute".

Being mindful that there was no statutory meaning of good cause, in the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported), the Court held that:

" What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" 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.”

Given the objective test, in the case just cited above used in determining what amounts to good cause, we reiterated the factors to consider. They are:

- 1. The applicant must account for all days of the delay.*
- 2. The delay should not be inordinate*
- 3. The applicant must show diligence and not a party, negligence or sloppiness in the prosecution of the action that he intends to take.*

In the present case, at paragraphs 2, 3 and 4 of his affidavit, the applicant only narrated the story of what on the two occasions led him to withdrawing the applications, on 25/8/2020 latest. In reply, the respondent urged me to consider it all as more of assertions than being good cause for the grant of extension of time.

It is not disputed that the thirty days' time given for the applicant to do the needful began running against him from 25/08/2020. However, he filed this application on 07/09/2020 which is twelve days far beyond the limitation period given without extension being sought and granted and did not account for each day of that delay. It is trite that, failure to account for even a single day of the delay is a fatal

ailment which renders an application for extension of time to be dismissed. We have held so in a number of cases including **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 and **Pray God Mbagu v. The Government of Kenya Criminal Investigations Department and the Attorney General of Tanzania**, Civil Reference No. 04 of 2019 (both unreported).

As I wind up, with an undisputed fact that, all the time the applicant had legal representation, I am persuaded to hold that, withdrawing the two applications on 28/04/2020 and 25/8/2020 was not a coincidence and so were the said extraneous depositions he made in the affidavit through the back door. Demonstrating on the lack of diligence on the part of the applicant in prosecuting the matter, in his ruling dated 20/05/2016 in Civil Application No. 274 of 2015 the Court (Musa, J.A) is on record having observed that: -

"....Thereafter, the applicant dawdled for almost four years before he eventually came with an application for leave on the 18th September, 2013. As it were, the application was adjudged time barred and accordingly dismissed on 12th June, 2015 (Mruke, J.). The dismissal order seemingly prompted the applicant to abandon the appeal process and instead he presently seeks

enlargement of time within which to lodge an application to revise the judgment decree and proceedings of the High Court”.


Moreover, without running risks of jumping into merits of the intended application it is noteworthy that, being challenged is the judgment and decree passed on 17/08/2007. It means that, the parties have been in court corridors for the past sixteen years. As such, the chances are that, the kind of multiplication of forward and backward actions in court might be delaying tactics which are intend to frustrate execution of the said one and a half decades old court decree. It follows therefore that, if provisions of rule 10 of the Rules assure the judgment debtor of his right to exhaust the appellate vertical hierarchy while also taking on board the Decree Holders’ right to enjoy the fruits of the decree so much the better. More important is timely justice of which the baseline is that, each litigation must come to an end. See unbroken chain of authorities which include **Chandrakant Joshubhai Patel v. R** [2004] TLR 218 and **Said Haruna Mapeyo v. R**, Criminal Application No. 21/01 of 2020 (unreported).

All said, I am not satisfied that the applicant has assigned good cause to warrant my judicial discretion and grant the application. It is devoid of merits which I hereby dismiss with costs. Order accordingly.

DATED at DAR ES SALAAM this 2nd day of March, 2023.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 8th day of March, 2023 in the presence of Mr. Godfrey Ukwonga, learned counsel for the Applicant and Mr. Daniel Chuma, learned counsel for the respondent, is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL