

IN THE HIGH COURT OF TANZANIA

AT TABORA.

MISC. CIVIL APPLICATION No. 23 of 2014

(Arising from Nzega District Court Civil App. No. 3/2013

Original Civil Case No. 3/2012 Mwangoye Primary Court)

MBARUKU ITALANGE.....APPLICANT

VERSUS

MACHIBYA NGANYILA.....RESPONDENT

RULING

19th & 26th February, 2015

RUMANYIKA, J.

The application under S.25 (1) (b) of the Magistrates' courts Act Cap 11 RE 2002 is for extension of time within which one to appeal against the 30.01.2014 decision of Nzega District Court. It is supported by affidavit of Mbaruku Italange (the Applicant), who appears in person. Mr. E.M. Machibya learned advocate appears for the Respondent herein.

Having adopted the contents of the supporting affidavit, the Applicant submitted that he was, immediately after the impugned judgment was delivered in his presence, caught up attending to his son in bed, who died suddenly on the very date were celebrating our Uhuru golden Jubilee. That the son was not admitted in hospital. Therefore he could not have appealed within time. Stressed apparently a layman.

With moderate zeal and vigor, Mr. Machibya submitted that the application was vague thus not tenable at law. Much as it was settled law that courts were bound to decide not beyond the prayers made in pleadings.

2ndly that the reasons assigned for delay were unfounded. One should have appealed on 2.3.2014 latest. Before lapse of the thirty (30) days required by law.

That if anything, the 24.4.2014 medical referral form attached to this application was infact irrelevant to the Applicant's delay. Like he does not tell what actually prevented him from appealing.

As matter of further clarification, the learned counsel referred me to the case of Ally Shabhay V. Tanga Bohora Jamaat (1997) TLR 305 (CA).. That the principles of extension of time were not cosmetics. They can not be distinguished casually until justice of the case so demands. Submitted the learned counsel.

The issue is whether the Applicant's delay was justified at law. I don't think am compelled to cite any authority (s) to the effect that the bottom line for extension of time is good ground and sufficient cause. Now, has the applicant assigned one really? Looking even with naked eyes at the fours of the material affidavit, the answer is

no! It should be noted always that evidence in chamber applications is given not viva voce. But by way of affidavit/counter sworn/affirmed by the parties. Any oral testimonies intended by parties to modify, edit or otherwise qualify affidavit or part thereof in disguise shall be as good as afterthought. An afterthought evidence is indeed no evidence in law. As said, correctly so by Mr. Machibya, courts of law can not take trouble striking a balance whenever witnesses give contradictory evidence. As by doing so, judges will be helping the parties make their case in my opinion.

The only reason assigned for the delay by applicant is his relative (now deceased son), having fallen sick (para 3 of the affidavit). But when was it ? The deponent is silent. Such that it is not known, if really falling sick of the boy was the cause (if at all) the Applicant was the sole attendant available then).

What is more is the fact (though not also deposed in the affidavit), that the boy passed away on the day we marked the Golden Jubilee of the Tanzanian Independence, ie on 9.12.2011 (taking judicial notice). Like the son died about three (3) years even before the impugned judgment was pronounced.

In otherwords the applicant's delay was deliberate. There can no be open ended period within which a person to take necessary steps in court. Short of which there would have been endless

litigation. A breeding ground of socio-economic instability. Much as no body would have been sure of "what will be happening this time tomorrow"!

I am in full agreement with Mr. Machibya on the principle in the case of Ally Shabhay (supra). That unless justice of the case so demands, the principles of extension of time are there to stay. Infact here, justice of the case demands that the devoid of merits appeal be dismissed. As said, there is no good, leave alone sufficient grounds of the delay assigned by the Applicant. Application dismissed with costs. Here and at the lower court;

Right of appeal explained.

S.M. RUMANYIKA

JUDGE

22/02/2015

Delivered under my hand and seal of the court in chambers this 26/02/2015. In the presence of the parties.

S.M. RUMANYIKA

JUDGE

26/02/2015