

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL APPL. NO.137 OF 2017

(Originating from RM'S Court Civil Case no. 3 of 2016)

THADEUS J. LYAMUYA.....APPLICANT

VERSUS

MONICA JONATHAN LERINGA.....RESPONDENT

RULING

DR. OPIYO, J.

This is an application by Chamber summons brought under section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2002, for an order for the extension of time within which to institute an appeal in the High Court of Tanzania against the judgement and decree of the Arusha Resident Magistrate Court in Civil Case no. 3 of 2016. The application is supported by an affidavit affirmed by Thadeus Joachim Lyamuya, the applicant herein.

In this matter the applicant was unrepresented while the respondent was represented by Jenipha John, learned counsel. In support of the application the applicant started by adopting his affidavit and submitted that he delayed to appeal in time due to medical reasons. That he was diagnosed with kidneys problems, and at the time when the judgment in their case

was delivered he was under serious attack, thus he was looking for treatment in different hospitals including at St. Elizabeth Arusha and Nairobi kidney centre in Kenya. That, it took him like four months to be diagnosed with kidney failure, then he had to undergo dialysis in a number of occasions. Due to that, he failed to make a close follow up of the matter as the advocate who was representing him withdrew from the matter, for his failure to pay him due financial constraint he was facing then. That, the problem intensified, and to date he is still under dialysis treatment as per attached medical documents. He therefore prayed for the court to grant him with extension of time to file appeal to the High court out of time based on those reasonable grounds and not out of his negligence in any John prayed to adopt way.

In reply Jenipha John also started by adopting respondents counter affidavit and submitted that they strongly object the application because, although the applicant really got sick and he was admitted at St. Elizabeth in Arusha on 20/3/2017, but in Annexure A1 to the applicants affidavit it is shown that he was discharged 26/3/2017, long before the decision was reached. The same was subsequently delivered on 29/3/2017. She submitted that, after all there is no proof that he was attending venous hospital sessions apart from being admitted once. That, under paragraph 7 of the affidavit the applicant stated that on 15/Nov/2017 he was referred to Nairobi Hospital for intensive treatment, but there is no any proof of that fact apart from cost estimates of kidney transplant which does not show any referral.

She further stated that, the applicant claims that he was not able to pay the advocate, leading to his withdrawal from the matter, while the advocate was showing appearance except for date of judgment. And if the applicant really failed to pay legal fees he would have taken due diligence to look for legal aid in order to appeal in time. Thus, because the applicant did not act with due diligence in appealing within time, he failed to use his right well. She referred to the case of **Lyamuya Construction Co. Ltd. V. Board of Registered Trustees of Young women's Christian Association of Tanzania, Civil Application No. 2/2010** where the court emphasised the need to exercise discretion judiciously. That being the case, since the applicant has failed to account for each day of delay for all those Months, there is no proof that he was hospitalized after the decision was reached, his reasons is not reasonable enough to warrant extension of time. She thus prayed for the application to be dismissed with costs.

In rejoinder the applicant stated that kidney treatment is different from other treatments, it takes considerable time even to diagnose the same. So his admission at St. Elizabeth did not yield any result as they failed to diagnose until when he went in Nairobi. After being diagnosed with kidney problem he had to embark on dialysis treatment. That, the disease itself loses some of one's brain to engage in any consciousness follow up on anything. On the issue of advocate presence, he submitted that he withdrew after he failed to pay him the balance and because he was sick he could not raise funds to engage a new advocate. Thus, he reiterated his prayer he made in his submission in chief.

I have given due consideration to both parties submission for and against this application. As a matter of general principle, it is entirely in the discretion of the court whether to grant or refuse an application for extension of time. That discretion is however judicial and so, it must be exercised according to the rules of reason and justice. The main guiding principle in that is showing "good cause" for the delay to take action in time. The issue was emphasised in the case of **Michael Lessani Kweka vs. John Eliafye(1997) TLR 152** where it was held that;

"The Court had power to grant an extension of time if sufficient cause had been shown for doing so."

Also in the case of **Musa & Others Vs. Wanjiro and Another** [1970] EA 481; where it was stated that;

"Normally sufficient reason for an extension of time must relate to the inability or failure to take the particular step".

In the current case, the reason for the delay advanced by the applicant is sickness as per the attached medical documents. The Medical documents show that he was indeed diagnosed with kidney problems and have been attending treatment, dialysis regularly. Section 14 (1) of Cap 89 under which the application is, the court may only extend time only if the applicant satisfies the court, that he was prevented by any sufficient cause from taking the necessary action in time. A close and careful scrutiny of the sequence of events as narrated by the applicant in his affidavit and

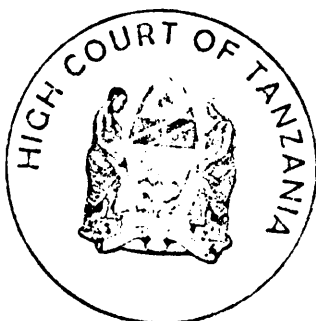
annexures thereto has demonstrated that he was a kidney failure patient attended by various hospitals, culminating to kidney transplant. The respondents counsel argued that the applicant was not admitted at the time of the decision desired to be appealed against, but well before the decision. However in my considered view, it is not only admission to hospital that shows the seriousness of the sickness, but also the kind of decease and frequency of attendance to hospital. The applicant was diagnosed with kidney problems; this is a serious decease, which in my view is capable of denying him a chance to act on his legal matters timely. Thus in this case, sickness like this constitutes good cause for delay warranting extension of time. For that, the application is granted. The applicant should lodge his appeal within fourteen days (14) from the date of this order.

I make no order as to costs.

(Sgd)

**DR.M. OPIYO,
JUDGE
8/5/2018**

I hereby certify this to be a true copy of the original.




D.J. MSOFFE,

**AG. DEPUTY REGISTRAR
ARUSHA**