

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT ARUSHA**

MISC. CIVIL APPLICATION NO. 110 OF 2017

(Originating from the Judgment of the District Court of Karatu in Civil Application No. 1/2017 and Primary Court of Karatu in Civil Case No. 17/2016)

JAMES PAULO.....APPLICANT

VERSUS

WILHELMINA LENDWA.....RESPONDENT

RULING

Date of Last Order: 06/97/2018

Date of Ruling: 06/08/2018

BEFORE: S.C. MOSHI, J.

The applicant filed an application before this court under section 25 (1) (b) of the Magistrates' Courts Act [Cap. 11 R.E 2002] and section 14 (1) of the Law of Limitation Act, [Cap. 89 R.E 2002] applying for the following orders;

- (a) That this Honorable Court be pleased to grant extension of time for applicant to file appeal against the Judgment of the District Court Karatu dated 22/05/2017 in Civil Appeal No. 1 of 2017.
- (b) That the Honorable Court may give any further order which may be deemed fit to grant.
- (c) Costs be provided for.

This application is supported by the affidavit of the applicant JAMES PAULO. Before this court, the applicant appeared in person and

unrepresented while the respondent was represented by Ngeseyan learned Advocate. This court ordered the hearing of the application to be disposed of by way of written submission and both parties filed their submission accordingly.

Submitting in support of the application, the applicant stated that the judgment of the District Court was pronounced on 22/05/2017. On 08/06/2017 while arranging for final legal assistance so as to file an appeal, he felt sick the situation which persisted and later he reported to Karatu Medical Centre for medical attention on 18/06/2017. He further stated that, irrespective of the medication, he was ill for almost three months consecutively. After getting a relief he immediately started preparing for an appeal; and that is the time when he realized that he was out of time hence making this application for extension of time. He further stated that, this court has discretion to grant the application for extension of time. The Court has to consider whether the applicant has shown good cause or sufficient reason for the delay. He contended that, sickness is a condition which can never be foreseen and in this respect he cited the case of **Emmanuel R. Maira vs. The District Executive Director Bunda**, Civil Application No. 66/2010 (unreported) where it was stated that;

"Health matters, in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike".

He further stated that, he was diligent that is why after he got well, he started taking steps by seeking time enlargement. He further cited the case of **Ally Omari vs. Abdallah Makoka**, Civil Appeal No. 112/2004 (unreported) where it was stated that;

"In my opinion, the learned District Magistrate erred in refusing to give the respondent now the appellant extension of time to file his written submission as there was reasonable cause for not filing them within the time limit specified by the court. The cause for the delay was due to his counsel's sickness the late Rweyemamu whose legs had been affected by disease."

He also cited the case of **Hamisi Athumani vs. Jumanne Makambi and two Others**, Civil Appeal No. 93/1997 (unreported) where it was stated that;

".....that he was sick and had to attend a local medicine man and that when the (sic) finally got the order he had to seek legal aid assistance.....Upon full consideration of the submission I am satisfied that this is a fit case in which an application for extension of time should be granted."

Based on the above, he said that this application has merits and prayed the same be allowed for the interest of justice.

Opposing the application, the applicant's counsel stated that it is undisputed that sickness is a condition which is out of control for anybody; but the only concern is on the time taken by the applicant from the date of

that the decision was made, which is 22nd May, 2017 up to 28th September, 2017 when he lodged his application. He submitted that, the applicant's allegation that he was sick is not true as the result of their findings from the alleged Hospital as per their letter dated 20/12/2017 and 2017 as annexed in the submission as "**annexure W 1**", and reply letter dated 9th January which is annexed and marked "**W 2**" the doctor said, he has no any evidence or proof that Mr. James Paulo was treated in that Hospital. He further stated that, the applicant's argument that he was sick is not justified in his submission because no doctor's report is annexed in his submission to proof and justify his sickness. Also, the applicant never stated in which extent did the sickness contributed or caused his delay. He further stated that, the decision of the District Court which the applicant is intending to appeal against was delivered on 22nd May, 2017 while the applicant stated that he was arranging to find legal assistance for appeal purposes, on 08th June, 2017 he became sick the facts which has never been proved. He therefore urged this court to disregard the applicant's submission.

In regard to the cases cited by the applicant in his submission, he stated that the said cases are totally different from the facts in this case as the applicant in this application had knowledge of the existence of the decision of the District Court, but he made no effort to initiate until time lapsed. He further submitted that, the principle has already been established that the Court has to allow the applicant's application to file an appeal out of time after the court has satisfied that there is sufficient cause or reasons for that delay. In this regard he cited the case of **Benedict Mumello vs.**

Bank of Tanzania, Civil Appeal No. 12 of 2002, CAT-Dar es Salaam(unreported), where it was stated that;

"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".

He also cited the case of **Musa & Others vs. Wanjiro and Another (1970) EA 481** where it was held that;

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

Again, he cited the case of **Regional Manager of TANROADS vs. Ruaha Concrete Co. Ltd**, Civil Appl. No. 96 of 2007 and **Mic Tanzania Limited vs. Arusha District Council**, Misc. Civil Appl. No. 66 of 2015 (all unreported); stated that;

"What constitutes sufficient reason cannot be laid down by any hard and fast rule, this must be determined by reference to all the circumstances of a particular case. This means that the applicant must place before the court material facts which move the court to exercise its judicial discretion in order to extend time limited by rules."

He contended that, the law also needs the applicant for extension of time to give the reason of each day of delay. Hence the applicant herein is duty bound to explain the reasons for each day of delay that is from 22nd May,

2017 to 28th September, 2017. Failure of it, the applicant is not entitled an extension of time to file his appeal out of time. To substantiate his argument, he cited the following cases; **Daudi Haga vs Jemitha Abson Machafu**, Civil Reference No. 1 of 2000 (C.A) (unreported), **Daudi Mlengi vs Titus N. Makombe**, Civil Application No. 93 of 1993 (C. A) (Unreported), **Acacia Pharmacy Limited vs (1) The Honorable Attorney General and (2) The Regional Administrative Secretary-Shinyanga Regional Commissioners Officer**, Commercial Case No. 95 of 2010 (unreported) and **Juliana Migire Muhale vs Fodey Security & Alarm System**, Revision No. 43 of 2015, (unreported). He went further stating that, the applicant's delayed for 130 days contrary to section 25 (1) (b) of the Magistrates Courts Act [Cap 11 R. E. 2002], which requires the appeal to be filed within thirty days after the date of the decision or order. He therefore submitted that, there is not sufficient reason to grant the prayer for extension of time and prayed this application be dismissed with costs.

I have considered the submission of the parties. This application is made under section 25 (1) (b) of The Magistrates' Courts Act (supra) and section 14 (1) of the Law of Limitation Act (supra) for an extension of time to file appeal to this Court against the decision of the District Court out of time. As already been stated by both parties, the powers of this court to grant an application for extension of time is discretionary; and in order for this court to exercise its discretionary powers of extending time, the applicant must advance sufficient and reasonable cause for the delay. That position of the

law was stated in the case of **Benedict Mumello vs. Bank of Tanzania** (supra) that;

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

See also the case of **Josephina A. Kalulu vs. Isaac Michael Mallya**, Civil Application No. 5 of 2009, CAT at Mwanza (unreported) and **Regional Manager of TANROADS vs. Ruaha Concrete Co. Ltd** (supra) in which it was also stated that an application for extension of time is entirely in the discretion of the court and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. The reason advanced by the applicant for the delay in his affidavit and the submission in support of the application is that he was sick. He said that, the sickness which is unforeseen and uncontrolled condition for any human being, prevented him from taking any further step to appeal against the decision of the District Court within time, hence this application. But going through the medical record which the applicant has attached in his application shows that, the applicant attended the hospital on two distinct dates from the time when the judgment of the District Court had been delivered; that is on 18/06/2017 and 23/06/2017. On 18/06/2017 after prescription he was given E.D of 5 days as well on 23/06/2017 the applicant after medication he was given E.D of 5 days. Counting from 28/06/2017 the time when the E.D ended to 28/09/2017 when the applicant filed this application gives us 90 days (three months). It

has been stated by the Court of Appeal in a number of cases that, in an application for extension of time, the applicant must account for each day of delay. See the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3/2007 (unreported) where it was stated that;

"Delay of even a single day. Has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

In this case, the applicant has failed to account for the delay of 90 days from the time when he was relieved from illness to the time when he filed this application. The delay of 90 days without taking any legal action is unreasonable and inexcusable.

Basing on the above reasons, I therefore find that the applicant has failed to give sufficient reasons for the delay; hence I hereby dismiss this application with costs. Order accordingly.


S. C. MOSHI
JUDGE
06/08/2018

