

**IN THE UNITED REPUBLIC OF TANZANIA  
IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO.400 OF 2017**

*(Arising from the Decision of Hon. J.S.K. Hassan, SRM in Civil Case No.12 of 2014 delivered on 29<sup>th</sup> October 2014 at the Ilala District Court)*

**KOBA SAID MFUME.....APPLICANT**

**VERSUS**

**RIKI HILL HOTEL.....RESPONDENT**

**RULING**

*Date of Ruling, 15<sup>th</sup> May, 2018*

**R. KEREFU SAMEJI, J.**

In this Application, the applicant, seeks orders of this Court for an extension of time to lodge an appeal out of time. The Application is filed under Section 14(1) of the Law of Limitation Act (Cap. 89 R.E 2002) and Section 95 of the Civil Procedure Code, Cap. 33 [R.E.2002]. The Application is supported by an Affidavit deposed by the Applicant himself. On the other side, the respondent has filed the Counter Affidavit vehemently challenging the application that there are no sufficient reasons submitted and the applicant has not accounted for each day of the delay.

At the hearing of this Application the applicant appeared in his personal capacity, unrepresented and the respondent had the services of Mr. Mussa Daffa, the learned Counsel.

The applicant informed the Court that the main reason for his delay was due to delay in getting the copies of the Judgement and the proceedings. He said he received the said documents on 15<sup>th</sup> August 2016 and filed this Application on 26<sup>th</sup> July 2017. When asked why he waited for almost a year to lodge this current Application, he responded that there was another application before Hon. Arufani J, which was struck out for being incompetent. When asked for the specific date on when the said application was filed in court and decided he said he cannot remember properly and he as well did not have the said Ruling to prove his allegations before the Court. All this information were not as well included in his Affidavit, which he gave under oath. He only prayed the Court to grant his Application.

On his part, Mr. Daffa strenuously challenged the Application and the submission made by the applicant. He started by posing that, parties are bound by their pleadings. He said, in the Affidavit in support of the

Application there is nowhere indicated that the applicant had since filed the other Application in this Court. Therefore, the Court cannot rely on the information coming from the bar, but should stick to what is indicated in the Affidavit. Mr. Daffa said according to Paragraph 5 of the Affidavit, the applicant received the copies of Judgement on 22<sup>nd</sup> December 2014. So from 2014 – 2017 when he lodged this application is almost three (3) years. He said, the applicant has not accounted for the delay of all those days.

Mr. Daffa also argued that the Affidavit only indicated the date the applicant received the documents, but is silent as when he lodged the appeal, if any. He cited the case of **Lyamuya Construction Company LTD V Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 at page 6, where Hon. Massati, J.A indicated factors to be considered in the determination of an application of this nature, to include:-

- (a) *That, the applicant must account for all the period of delay;*
- (b) *The delay should not be inordinate;*

*(c) The applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take; and*

*(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

Mr. Daffa argued that, since the applicant has not complied with the above issues and has not accounted for each day of the delay, then the Court cannot grant the application. He thus prayed the Application to be dismissed.

In rejoinder submission, the applicant insisted that there are other information which is not indicated in the Affidavit. He said, he has informed his lawyer about all the steps he took in following –up on this matter, but the same were not indicated. He said, he as a lay person who also does not know the English, he was not aware that all these information were not included. He said he has all the documents including the Ruling delivered by Hon. Arufani, J on this matter. He thus prayed the Court to assist him and allow him to add all those information missing in the Affidavit.

Having perused the record of the case and given a deserving weight to the submissions by both parties, I wish to start by pointing out that, it is well settled that in considering an application for an extension of time to lodge an appeal, the main issue to be considered by this Court is *whether the applicant has submitted sufficient reasons, which contributed to the delay.*

In other words, the applicant must show with evidence that, the delay was not caused by his dilatory conducts, inaction, negligence, or compliance. He must convince the court that, he acted diligently and reasonably in pursuing this matter. This position was discussed in the case of **Yusufu Same and Another Vs Hadija Yusuf**, Civil Appeal No. 1 of 2002 and **Braiton Sospeter @ Mzee and 2 Others v. R.**, Criminal Appeal No. 358 of 2009, both decisions of the Court of Appeal (unreported). In the case of **Yusufu Same**, (supra) the Court of Appeal categorically stated, at page 5 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.***

*This discretion however has to be exercised judicially and the overriding consideration is that **there must be sufficient cause***

*for so doing. What amount to "sufficient cause," has not been defined. From decided cases a number of factors have to be taken into account, including, **whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant***". [Emphasis supplied].

Therefore, extension of time is entirely in the discretion of the court to grant or refuse it and the same may be granted only where "*good cause*" or "*sufficient reasons*" for the delay has been established. This position was also discussed in the cases of **Sospeter Lulenga v. the Republic**, Criminal Appeal No. 107 of 2006, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. the Republic**, Criminal Appeal No. 130 of 2003, Court of appeal of Tanzania at Mbeya, (Unreported) and **Shanti v. Hindoche & Others** [1973] EA 207.

It is also a trite law that, the applicant is required to account for each day of the delay. In the case of **Al Imran Investment Ltd V Printpack Tanzania and another Misc. Civil Cause No 128 of 1997** in

determining a similar application the following observation was underscored by Hon. H. Nsekela J, as he then was at page 2, that:-

*"In order for the applicant to have the benefit of Section 14(1) of the Law of Limitation, applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation"*

In all these cases cited above courts, while considering applications for extension of time, they, among other factors, considered special circumstances and sufficient reasons showing why the applicant should be allowed to lodge his application out of time. I entirely agree with these authorities and I will adopt them entirely in this Application.

Now, in determining this Application before me, the main issues are (i) *Whether or not the applicant has given convincing explanation and reasons for the delay in lodging his appeal* and (ii) *Whether the applicant has explained or accounted for each day of the delay.*

I must start by pointing out that, I have since discovered that the applicant's Affidavit in support of the Application contain untrue and incomplete information, as clearly admitted by the applicant himself.

It is also a settled principle that parties are bound by their pleadings. The Affidavit is silent on what transpired from 22<sup>nd</sup> December 2014 the date of receipt of the copies of the Judgement and proceedings to 17<sup>th</sup> July 2017 when this Application was lodged. There is a period of almost three years which the applicant has not been able to account for. I thus do agree with Mr. Daffa that this is definitely an *inordinate* delay of about **1,080 days**, which cannot be entertained by this Court. In the case of **Tanzania Harbours Authority V. Mohamed R Mohamed (2003) TLR 76** at p. 80 the Court of Appeal of Tanzania, while dismissing an application for extension of time observed that:-

*The appellant was late for about 187 days after the time given by the court for filing the Written Statement of Defence. This, to say the least, is inordinate delay. Admittedly, this court has said in a number of decisions that time would be extended if*



*there is an illegality to be rectified. However, this court has not said that time must be extended in every situation. Each situation has to be looked at on its own merits. In this case the defence has been grossly negligent and surely cannot be heard now to claim that there is a point or law at stake.*

In addition in the case of **Sebastian Ndaula Vs Grace Rwamafa**, Civil Application No. 4 of 2014, (unreported), the Court of Appeal of Tanzania at Bukoba at page 8 and 9 held that:-

*"The position of this Court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of delay; See Bariki Israel Vs the Republic, Criminal Application No. 4 of 2011, (Unreported). The need to account each of the days of delays becomes even more important where matters subject of appeal like the present one is, was decided eighteen years ago on 6/02/1997...Application has failed to advance good cause to justify an extension of time, the Application was dismissed".*

The above decisions of the superior court of the land are binding on this Court. Therefore, before extending the time herein, this Court must satisfy itself that, there are sufficient reasons and the applicant has accounted for each day of delay. In the case before me, the applicant has not performed this duty.


I am also aware that in this extent I am supposed to dismiss the matter. However, considering the circumstance of this case and the fact that the applicant is a lay person who does not understand English and who has informed the Court that he made several applications before the same Court and they were struck out for being incompetent. He has as well explained that he gave all these information to his lawyer and thought that all were included, but only to be told that, the said information were not included in his Affidavit. It is my respectful view that, I should not dismiss this matter. As doing so, I will completely close the doors of justice for the applicant who is a layperson.

In upshot and taking into account the above points, it is my respectful view that, the applicant has failed to show sufficient reasons for his inordinate


delay and therefore the Misc. *Civil Application No.400 of 2017*, is hereby struck out. I make no order as to costs.

It is so ordered.

**DATED** at **DAR ES SALAAM**, this 15<sup>th</sup> day of May 2018.

  
R. K. Sameji  
**JUDGE**  
15/05/2018

**COURT-** The Ruling delivered in Court Chambers in the presence of the Applicant and Mr. Mussa Daffa, the learned Counsel for the Respondent.

  
R. K. Sameji  
**JUDGE**  
15/05/2018

ORIGINAL