

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 284 OF 2017**

**SYMPHORIAN KITARE.....APPLICANT**

**VERSUS**

**RESIDENT DIRECTOR FRIEDRICH**

**EBERT STIFTUNG.....RESPONDENT**

*10/05&08/06/2018*

**RULING**

**MWANDAMBO, J**

This is an application for extension of time to lodge a notice of appeal made by way of chamber summons under section 11 (1) of the Appellate jurisdiction Act, Cap 141 [R.E 2002] hence forth to be referred to as the Act. The application is supported by the Applicant's own affidavit. The counter affidavit of Maryam Semlangwa, learned Advocate for the Respondent has been filed to oppose the application.

The facts giving rise to the application are admittedly straightforward. The Applicant unsuccessfully sued the Respondent in Civil Case No. 105 of 2004 determined on 28<sup>th</sup> June, 2006. The Applicant's appeal to the Court of Appeal was struck out for being incompetent on 07<sup>th</sup> December, 2010. His second appeal in Civil Appeal No. 12 of 2014 was likewise struck out on 24<sup>th</sup> April, 2017 for being accompanied by a defective certificate of delay. Since the notice of appeal lodged earlier ceased to exist as a result of the striking out the appeal, the Applicant has now preferred this application for extension of time for lodging

a fresh notice of appeal. The Respondent simply notes the averments in the affidavit putting the Applicant to strict proof.

At the oral hearing, the Applicant urged me to grant the application because the delay was not a result of his negligence rather due to documents supplied by the Court which turned out to be defective rendering the two appeals incompetent culminating into orders striking them out. The Respondent, who was represented by Mr. Emmanuel Nasson learned Advocate urged the Court to dismiss the application because the Applicant has not exhibited sufficient grounds to enable the Court exercise its discretion in his favour. In amplification, the learned Advocate drew the Court's attention to established principles in applications for extension of time that is to say; reason for delay and accounting for each day of delay articulated in **Sebastian Ndaula v. Grace Rwamafa CAT Civil Application No. 4 of 2014 (unreported)**. Submitting further, the learned Advocate submitted that the Applicant failed to account for 22 days between 24<sup>th</sup> April, 2017 when Civil Appeal was struck out and 16<sup>th</sup> May, 2017 the date on which he filed the instant application. Stressing the point, learned Advocate referred the Court to **Abel Mwamwezi V.R,** MBY CAT Cr. Appeal No. 01 of 2013 (unreported) in which the Court of Appeal underscored the principle that public policy requires that litigation must come to an end.

As seen earlier, the reason for the delay in lodging a notice of appeal is common ground. The only dispute is whether the fact that the Applicant's appeals were struck out for being defective constitutes good cause for extending the time to lodge a notice of appeal within the ambit of section 11(1) of the Act and if so, whether the Applicant has accounted for each day of delay. I will discuss each of the issues in turn.

With regard to the first issue, the Applicant would have me hold that the reasons for the striking out of his two appeals by the Court of Appeal for being incompetent were contributed by this Court itself by supplying defective documents to accompany the records of appeal. That argument sounds attractive but less convincing. As far as I am aware, apart from his capacity as a party to the fateful appeals, the Applicant is a seasoned lawyer and an Advocate in his own right. Had ignorance of the court rules and procedures been one of the reasons to be considered, it could not be available to the applicant in the same manner as a lay person. Contrary to his arguments at the hearing what appears to be obvious in the two appeals is that there was lack of diligence in complying with the Court's relevant rules regulating appeals to the Court of Appeal. There is no doubt that lack of diligence in complying with Court rules is fatal as expressed in various cases. One of such cases is **Loswaki Village Council and Another v. Shibesh Abebe**, CAT Arusha Civil Application No. 23 of 1997(unreported) in which it was held thus:

*"Those who seek the aid of the law by instituting proceedings in a Court of justice must file such proceedings within the period prescribed by law and that those who seek the protection of the law in a Court of justice must demonstrate diligence."*

Similarly, in **Dr. Ally Shabhay versus Tonga Bohora Jamaat** [1997] TLR 305 it was held thus, *those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence.* The Court of Appeal speaking through Samatta, JA (as he then was) had this to say at p.306 - 307:-

*"While I am alive to the need of courts in this country satisfying consumers of justice that they (the courts) always remember that procedural rules are meant to facilitate and*

*not defeat justice I do not entertain any doubt that what Sir Joselyn Simon P, said in the following passage in his judgment in **Edwards v Edwards** [1968] 1 WLR 149 at 151, is applicable to the administration of justice in this country:*

*'So far as procedural delays are concerned, Parliament has left discretion in the courts to dispense with the time requirements in certain respects. That does not mean, however, that the rules are to be regarded as, so to speak, antique timepieces of an ornamental value but no chronometric significance, so that lip service only need be paid to them. On the contrary, in my view the stipulations which Parliament has laid down or sanctioned as to time are to be observed unless justice clearly indicates that they should be relaxed'.*

From the foregoing it will be obvious that the Applicant's attempt to shift the blame in lodging incompetent appeals before the Court of Appeal can hardly be considered as a sufficient ground for extending time more so when it is clear that this is the second time the Applicant a seasoned lawyer for that matter is coming before this Court for extension of time. There is no doubt that one may be justified to sympathise with what befell on the two fateful appeals. However, it is the law that sympathy has no place in considering an application for extension of time. To borrow the statement in **Parry vs. Carson** [1963] EA 546 referred in **Daud s/o Haga v. Jenitha Abdon Mchafu**, CAT Civil Application No.19 of 2006 (unreported), it does not seem just that an applicant who has no valid excuse for failure to utilize the prescribed time, but tardiness, negligence or ineptitude of counsel should be extended extra time merely out of sympathy for his cause. In the circumstances I will unhesitatingly endorse the submissions by

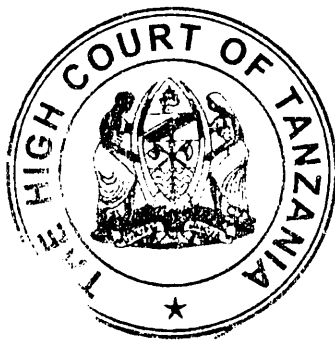
the learned Advocate for the Respondent that litigation must come to an end on the authority of **Abel Mwamwezi V.R** (supra) and this can only be achieved by declining to grant the application. Having so held I now turn my attention to the second issue; that is to say; has the Applicant accounted for each day of delay?


It is now settled law that before exercising its discretion extending time, the Court is enjoined to consider not only the reason for the delay but also the length of such delay as together with an account for each day of delay. That position was underscored the Court of Appeal in **Sebastian Ndaula v. Grace Rwamafa** (supra) referred by the learned Advocate for the Respondent as well as **Tanzania Coffee Board V. Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015(unreported) in which the said Court reiterated its decision in **Bushiri Hassan V Latifa Lukio Mashayo**, Civil Application No 3 of 2007(unreported) stressing that a party seeking an order of extension of time is duty bound to account for each day of delay failing which, he risks his application being dismissed. A similar approach was taken in **Abood Soap Industries Ltd V Soda Arabian Alkali Limited**, Civil Application No. 154 of 2008 in which that Court stated that satisfactory account for each day of delay is one of the factors to be considered in determining applications for extension of time. This Court for its part has had occasion to apply the above principle in several cases including; **Andrew Ndakidemi V. Adili Bancorp Ltd**, Misc. Civil Application No. 76 of 2015(unreported) and **Emmanuel Billinge V. Praxeda Ogweyo & Joseph John Pembe**, Misc. Application No. 168 of 2012(unreported). As rightly submitted by the learned Advocate for the Respondent, the second appeal was struck out on 24<sup>th</sup> April 2017 but it took the Applicant 22 days to lodge the instant application on 16<sup>th</sup> May 2017. The affidavit is conspicuously silent on the period in between neither did the Applicant make any attempt to say anything in his submissions during the hearing. Having failed to surmount that hurdle, the

Court cannot exercise its discretion by extending the time pursuant to section 11(1) of the Act.

In sum, I am satisfied that the Applicant has not disclosed sufficient cause for delay in lodging his notice of appeal for the Court's exercise of its direction under section 11(1) of the Ac. The application is accordingly dismissed with costs. It is so ordered.

Dated at Dar es Salaam this 8<sup>th</sup> day of June 2018



  
L.J.S. Mwandambo

**JUDGE**

**08/06/2018**