

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

**MISC. CIVIL APPLICATION NO.546 OF 2017**

*(Arising from the Decision of Kilombero District Court by Hon. T. A. Lyon, RM in Civil Appeal No. 6 of 2017 delivered on 18<sup>th</sup> July 2017)*

**ABDALLAH NGENYA.....APPLICANT**

**VERSUS**

**AMINA LULUBA..... RESPONDENT**

**RULING**

*Date of the last Order 3<sup>rd</sup> May 2018*

*Date of Ruling, 22<sup>nd</sup> June, 2018*

**R. KEREFU SAMEJI, J.**

In this Application, the applicant seeks orders of this Court for leave 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 Rule 3 of the Civil Procedure, (Appeals in Proceedings Originating in Primary Courts) G.N.312 of 1964. The Application is supported by an Affidavit deposed by the Applicant himself.

The applicant herein is under the services of Mr. Omari Kilwanda, the learned Counsel, while the respondent appeared in her personal capacity, (unrepresented).

On 3<sup>rd</sup> May 2018 upon request by Mr. Kilwanda it was ordered that, the Application be argued by way of written submissions. As such, the applicant was supposed to file his submission on or before 17<sup>th</sup> May 2018, the reply by the respondent on or before 07<sup>th</sup> June 2018 and the rejoinder, if any, on 13<sup>th</sup> June 2018 and the Ruling on the Court on 22<sup>nd</sup> May, 2018.

It is on record that, the applicant has filed his written submission as ordered by the Court. However, for no apparent reasons, the respondent has not filed her submission as ordered by the Court. It has to be noted that, failure to comply with the order of the Court in filing written submissions amounts to non-appearance of the party on the date fixed for hearing. See the case of **Abdallah Mbuma Vs Gabriel Lugala** Misc. Land Application No. 01 of 2013 (HC) Iringa (Unreported). Litigants must always understand that Court orders are made to be respected and complied with. The order of this Court issued on 24<sup>th</sup> July 2017 was made with the purpose of regulating the hearing proceedings by way of written submissions within prescribed period. See the case of **Mankobrand Versus Miroslav Katik and another** (HC) Civil Case No. 321 of 1997, Dar-es-Salaam Registry

(*unreported*), where the Court made a remarkable observation about the orders of the Court when it said;

*"...they are meant to command parties to act within a time frame fixed by the court. If the parties are to act in total disregard to those orders then court business will be rendered uncertain; and that will not be good for the efficient administration of justice ..."*

In the case at hand, despite a total disregard of the court's order, the respondent did not even attempt to initiate any steps to apply for extension of time, when her time to file written submission expired. She decided to stay aloof to-date, when the Court is expected to craft the ruling on the matter. In the circumstance, the respondent has forfeited her right to respond to the submission filed by the applicant and as such, the Court will only consider the applicant's submission.

In his Affidavit in support of the Application the applicant stated that immediately after the judgement of the District Court, which was delivered on 18<sup>th</sup> July 2017 he applied for copies of Judgement and Decree which were given to him on 23<sup>rd</sup> August 2017. He said, after receiving the said documents he became sick and it was therefore

difficult for him to make follow-up on his case. I have however observed that, the said letter was not attached to the Application.

In addition to the applicant's Affidavit Mr. Kilwanda submitted that, the origin of the matter is the *Matrimonial Cause No. 45 of 2016* that was filed by the respondent before the Mang'ula Primary Court, where the matter was decided in the favour of the respondent. He said, the applicant being aggrieved he appealed to the District Court where again the matter was decided in the favour of the respondent. He submitted further that, the main reason for the applicant's delay to lodge the appeal was due to the fact that, he was unrepresented at the subordinate court. That, after the Judgement, he became sick to the extent of not being able to make a follow-up on his case. He explained further that, the applicant used traditional medicines admitted to him by a witch doctor, where he stayed for a long time. Mr. Kilwanda referred to the case of **Samson Kishosha Gabba V Charles Kingongo Gabba** [1990] TLR 133 and prayed the Court to be pleased to grant leave for the applicant to file the appeal out of time.

I have given careful consideration to the entire Application and arguments advanced by Mr. Kilwanda. I wish to note that, it is a well-settled principle that in considering an application for an extension of time to lodge an appeal out of time, the main issue to be considered is *whether the applicant has submitted sufficient reasons, which contributed to the delay*. The applicant must show with evidence that the delay was not caused by her dilatory conducts, inaction, negligence, or compliance. He must convince the Court that he acted diligently and reasonably in pursuing his appeal processes. This position was discussed in the case of **Braiton Sospeter @ Mzee & Two Others v. R.**, Criminal Appeal No. 358 of 2009 (unreported), where the Court categorically held that:

*"In the determination of applications for extension of time, be it under the Rules or any other law, the primary concern of the court is to probe into the causes of reasons for the delay and nothing more."*

However, factors constituting sufficient reasons are not categorically explained or itemized, but the same depends on the circumstances of each case. It should be noted also that, the exercise of this power is discretionary; the only condition required thereto, is to act judiciously.

In a famous case of **Mumello v. Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal held 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."* 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.

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

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

issue is *whether or not the applicant has given convincing explanation and reasons for the delay in lodging her appeal.*

From the applicant's Affidavit and submission made by Mr. Kilwanda, it is clear that, though the applicant had submitted that, after being aggrieved with the said judgement he wrote letters to the court requesting for the copies of Judgement and the Decree, but the said letter (s) is not attached to the Affidavit.

I am also mindful of the fact that both, in the applicant's affidavit and submission by Mr. Kilwanda, the main reason that hindered the applicant to submit his appeal within time is the issue of sickness. He said, after he received copies of Judgement and Decree the applicant became sick and he attended treatment from a local medical doctor (a witch doctor), who treated him with traditional medicines. Mr. Kilwanda submitted further that, the applicant stayed at the medical doctor for a long time, for that treatment and as such he failed to make follow-up of his case.

However, there is no evidence tendered before the Court to prove the issue of applicant's sickness, as to *whether during that whole period of*

*alleged local medication treatment, the applicant was admitted at that place or was outpatient. The specific period of that treatment, place of treatment and even the name of the alleged local or traditional doctor were not revealed.* With due respect to Mr. Kilwanda, I find the reasons employed hereto to be nothing but <sup>m</sup>mere allegations which were not supported by concrete evidence as required by the law.

It is my considered opinion that, if the applicant and his Counsel could have acted diligently, could have at least supported this application with an affidavit from the said local doctor showing that he was actually treating the applicant at a certain place and for a certain period of time. Failure to attach such an affidavit renders the applicant reasons to be just mere and bare assertions. In the case of **Christopher Mtikila Vs. Jacob Nkomola & Three Others**, Civil Case No. 278 of 1997 HC (Unreported), the Court stated that:- *"It is trite law that the **bare assertions could not suffice in showing good cause for delay**".* [Emphasis added].

From the above authority, I wish to emphasize that, the law is clear that *"he who alleges must prove to the satisfaction of the court"*. It goes therefore without saying that, in the application for the extension



of time to appeal the applicant must show with evidence that the delay was not caused by his dilatory conducts, inaction, negligence, or non-compliance. He must convince the court that he acted diligently and reasonable in pursuing his appeal processes.

In addition, it is also a fact that the applicant has failed completely to account for the delay of every day that passes, each day of the delay as required by the law. In the case of **Al Imran Investment Ltd V Printpack Tanzania and another (supra)** in determining a similar application the Court made the following observation, that:-

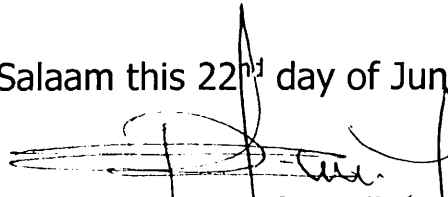
*"In order for the applicant to have the benefit of Section 14(1) of the Law of Limitation, applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation"*

In this case the applicant has failed to execute this task.

In upshot and taking into account the above points, it is my view that the applicant has failed to show sufficient reasons for his inordinate delay and therefore the *Misc. Civil Application No.546 Of 2017* is hereby dismissed with costs.

It is so ordered.

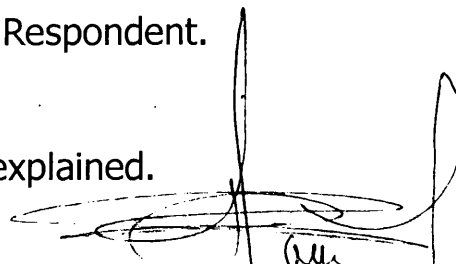
**DATED** at Dar es Salaam this 22<sup>nd</sup> day of June 2018.



R. K. Sameji  
**JUDGE**  
22/06/2018

**COURT** – Ruling delivered in Court Chambers in the presence of the Appellant and the Respondent.

A right of Appeal explained.



R. K. Sameji  
**JUDGE**  
22/06/2018