

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

MISC. CIVIL APPLICATION NO. 666 OF 2018

(Origin: Civil Case No. 6/2018 Bagamoyo District Court)

SWALLEHE SULEIMAN HASSAN..... APPLICANT

VERSUS

MARY JOHN PATRICK.....RESPONDENT

RULING

Date of Last Order: 22/10/2019

Date of Ruling: 19/12/2019

S.M. KULITA, J.

This application has been taken by the applicant seeking this Court to allow his application for extension of time for him to file an appeal. The application has been brought under **Section 14(1) of the Law of Limitation Act [Cap. 89 R.E 2002]**. It has been supported by an affidavit of the applicant himself.

Martina Nkona Lazaro (Advocate) appeared for the applicant while Mr. Goodchance R. Lyimo (Advocate) appeared for the Respondent.

The reason for the application as can be reflected in the affidavit of the applicant in support of his application at paragraph 9, that the trial Court issued the copy of ruling and order out of time for appeal.

The parties agreed to dispose this application by way of written submission.

It is the submission by the Counsel for the applicant that immediately after delivering the judgment on the very material date, a hand written letter requesting a copy of ruling was written and submitted and received by the trial Court. It was not possible for the applicant to have the same since there were no facilities to produce the same and good enough the letter is in the Court records.

The applicant's counsel submitted further that they made several follow-ups of copies of ruling and orders ending up with promises. He submitted that since the applicant is a resident of Dar es Salaam and the Court is situated at Bagamoyo most of the follow-ups were made through phone calls.

The Learned Counsel for respondent strongly attacked the arguments by the counsel for the applicant as being untrue. The counsel for the respondent submitted that it is a trite law that an application for extension of time is entirely a discretion of the Court to grant or refuse it. This discretion has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing as enshrined in the case of **YUSUF SAME AND ANOTHER Vs. HADIJA YUSUF, Civil Appeal No. 1 of 2002 (CAT), at DSM [unreported]**.

The respondent's counsel submitted further that the only reason advanced to warrant the grant of the application is that, the lower court had failed to supply him with the certified copies of the decision on time in order to appeal. The ruling subject to contention was delivered on 06th September, 2018, the extract copy of the same was issued on 16th October, 2018 and the instant application was filed in this court on 30th October, 2018. Under Part II Paragraph 2 of the schedule to the Law of Limitation Act Cap 89 R.E 2002, a party must lodge his appeal within 45 (forty-five) days of the date of the decision. This means that the applicant herein ought to have filed his intended appeal on or before 21st October, 2018 which is the last statutory day to appeal and instead he negligently and grossly waited until 30th

October, 2018 when he filed his application, which is more than 14 days from the date of receipt of the impugned decision.

It is also the respondent's counsel submission that there were no essential steps taken by the applicant towards seeking for certified copy of the said decision. There is no evidence to convince the court and the adverse party that indeed that essential steps was really deployed which renders the said fact as a hearsay hence incapable for admission. The applicant is submitting on the allegedly letter which did not form an integral part of his application and thus importing extraneous issues out of the realm which cannot be amenable by this court to rely to it. The respondent's counsel prayed for the dismissal of this application with costs.

In a short rejoinder counsel for the applicant submitted that the core consideration in granting extension of time as lightly cemented in the case of **Tanzania Revenue Authority V. Tango Transport Co. Ltd, Civil Application No. 4 of 2009** to include good reasons for delay, balance of convenience and existence of arguable case. The applicant's counsel submitted that the application in this case is justifiable and if extension of time is not granted the applicant stands to suffer than what the

respondent can do, hence they pray this Court to grant their application.

Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2002 under which the applicant has made his application clearly provides;

“The court may, for any reasonable or sufficient cause, extend the period of limitation for institution of an appeal and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal”.

In the case of **MEIS INDUSTRIES LIMITED AND OTHERS V. TWIGA BANKCORP, MISC. COMMERCIAL CAUSE NO. 243 OF 2015 [2016] TZHCCOMD 17 (unreported)** the Court started that for an application of this nature to succeed there must be given sufficient reasons to the satisfaction of the Court why the order was not challenged in requisite time. That is to say, 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. That being the discretion of the court, the applicant must place before the

court material which will move the court to exercise its judicial discretion in order to extend the time limited by the rules.

In the light of the above submissions from both sides, the issue is whether the applicant has advanced sufficient reason(s) to warrant the grant of the orders sought.

In the case at hand, the reason brought by the counsel for the applicant for the delay was that they were not supplied with the copies of the ruling and order by the lower court in time despite their timely request through a hand written letter and phone calls.

I have gone through the Ruling and Order of the District Court of Bagamoyo which are annexed to the applicant's application and which was not objected by the respondent, the ruling was delivered on 06/09/2018 and it was ready for collection on 08/10/2018. The Court Order was drawn on 09/10/2018 and it was extracted on 16th October, 2018. Under Part II paragraph 2 of the schedule to the Law of Limitation Act, Cap. 89 R.E 2002 the applicant was required to lodge his appeal within forty-five days from the date of the decision. This means he was supposed to file his appeal before 21st October, 2018. The applicant delayed to file his appeal for 13 days from the date on which the ruling

was ready for collection to the last date which he was supposed to file his appeal.

In the case of **DAR ES SALAAM CITY COUNCIL VS. S. GROUP SECURITY CO. LTD, CIVIL APPLICATION NO. 234 OF 2015, COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (unreported)** the Court stated;

"As a matter of general principle, it is always in the discretion of this Court to grant extension of time..... but the instance which this Court has consistently taken is that in an application for extension of time, the applicant has to account for every day of the delay".

In the present application, the learned counsel for the applicant has not accounted for the 13 days delayed in filing this application. He has not explained any sufficient reason for the delay in all those days.

Also the submission by the learned counsel for the applicant that the timely requested copies of the ruling and order of the lower court has no evidence to prove it. There is neither a letter nor any other evidence which is annexed to his application to support his application.

This demonstrate that the applicant was not serious with his case and he lacks diligence in taking essential steps towards pursuing his right of appeal.

From the above reasoning I hereby hold that sufficient cause or reason has not been shown by the applicant to justify for the grant of the orders prayed for in his chamber summons. So the application is hereby dismissed with costs.



S.M. KULITA

JUDGE

19/12/2019