

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

MISC. CIVIL APPLICATION NO. 688 OF 2016

EDWARD MSAGO..... APPLICANT

VERSUS

DRAGON SECURITY SERVICES LTD.....RESPONDENT

Date of last order: 2/8/2019

Date of Ruling: 11/10/2019

R U L I N G

MGONYA, J.

The Applicant herein made this Application under **Section 11(1) of the Appellate Jurisdiction Act Cap. 141 [R. E. 2002]** and **section 14(1) of the Law of Limitation Act, Cap. 89 [R. E. 2002]** for orders that:

- 1. That this Honorable Court be pleased to issue an order for extension of time to file an Application for Revision to the Court of Appeal of Tanzania against the Ruling of High Court of Tanzania (Dar es Salaam***

District Registry) delivered by Hon. Judge Shangwa on 28/4/2009 in Civil Revision No. 49 of 2008.

2. Costs of this Application to follow event; and

3. Any other relief(s) this Hon. Court may deem fit and just to grant.

The Application is supported by the Joint Affidavit sworn by **EDWARD MSAGO** the Applicant herein.

Respondent herein, filed a Counter Affidavit strongly challenging the Application.

When the matter came for hearing, I ordered parties to file their respective written submissions in disposing the Application. The order was adhered to respectively, hence this Ruling.

In support of this Application, the Applicant's main reason of failing to file his respective Revision in time, hence this delay and a prayer for extension of time, was seeking advice to the top Officials of Judiciary on the way forward after he had lodged a complaint following his dissatisfaction to the decision by Hon. Shangwa J. in **Misc. Civil Revision No. 49/2008** which was quashed on 28/4/2008. To be precise and for ease of reference, let me quote the Applicant's 11th - 15th paragraphs as hereunder; to get the gist of his delay, hence this Application:

11. That **Civil Revision No. 49/2008** was placed before Honorable Justice Shangwa, who upon hearing quashed the execution order of the Resident Magistrate Court issued on **5th September, 2008**. The said decision was based on the previous invalid proceedings which were nullified by the decision of Honorable Justice Othman as stated hereinabove. Copy of the High Court Ruling is attached marked **Annexure EM "3"** collectively.

12. That I was gravely aggrieved by the said High Court decision and immediately I lodged a complaint to the **Jaji Kiongozi** who upon receipt of my complaint responded as per attached letter **"EM4"** dated **11/11/2008**.

13. That following the advice of **Jaji Kiongozi** I lodged a complaint to the Chief Justice who upon receipt of my complaint he responded as per attached letter **Annexure "EMS"** date **11/11/2008**.

14. That when my complaint was placed before the **Chief Justice**, I was advised either to appeal out of time or to apply for Revision in the Court of Appeal against the Ruling of Honorable Justice Shangwa. Copy of the letter dated

28/12/2015 is annexed hereto marked Annexure "EM6".

15. That upon receipt of the advice of the Chief Justice I duly prepared and lodged an Application for Revision in the Court of Appeal of Tanzania on 27/01/2016 – Civil Application No. 18/2016. However the said Application was struck out by the Court of Appeal for being lodged out of time as per attached Court Order dated 07/09/2016."

The Applicant further submitted that, his failure to lodge the intended Revision on time was occasioned by the circumstances explained above of which were beyond his control.

The Respondent challenging the Application, seriously wondered as to why the Applicant did not act on time against his dissatisfaction, instead it took him the period of seven years since the decision on issue was delivered. He said, the Applicant had time to take legal steps to his Application but instead, he was seeking redress for his grievances by knocking to the doors of the court instead of appealing according to the law.

Further, the Respondent reminded the court that, whether the Application has merit or otherwise, the same can only be

entertained if there is a sufficient reason advanced by the Applicants.

Finally, Respondent prayed the court to dismiss the Application for lack of merits with costs.

Having gone through both parties submissions, I have to remind parties it is a trite law that an Application for extension of time is entirely in the discretion of the Court to grant or refuse it, through the said power has to be exercised judiciously. Moreover, the extension of time may only be granted **where it has been sufficiently established that the delay was with sufficient cause.**

Like all other Applications for enlargement of time, the instant Application inclusive, the extension of time can be extended by this Court only upon demonstration of good cause.

The question now is whether the reasons advanced by the Applicant herein amounts to good cause.

In law, the definition of what amounts to good cause depends on the particular reason and circumstances of each case. I am mindful that the phrase "**good cause**" or "**sufficient cause**" should receive a liberal construction in order to advance substantial justice when no negligence or **inaction** is exercised by the

Applicant. On this I am referring to the books titled "**INDIAN LIMITATION ACT WITH NOTES**", *Sixth Edition by H.G. Pearson and B. K Ac Haryya at page 25* and "**B. B MITRA'S INDIAN LIMITATION ACT**", *10th Edition at page 34* and **LAW OF LIMITATION 5th Edition by Rustomji at page 84.**

Further, in the case of **DAPHNE PARRY VS. MURRAY ALEXANDER CARSON [1963] EA 546 Rustomji** was quoted at page 848 where he had the following to say:

"Throughout the court should no doubt give a liberal interpretation to the words "sufficient cause" its interpretation must be in accordance with judicial principle". [The emphasis is mine].

I am aware that what amounts to sufficient cause includes among others that:

- (i) To bringing the application promptly;
- (ii) Valid explanation for the delay..., and
- (iii) Lack of negligence on the part of Applicant.

In line with the above reasoning, I am of the view that, the reason of delay offered by the Applicant under the circumstances, does not command the respect of this honorable court to grant an order for extension of time.

It has to be noted that, the thrust of the good cause needed by the court in this category of Application, lies on the crucial question, whether in the light of what the Applicant have tried to demonstrate to be good / sufficient cause can warrant the grant of the Application sought.

Going through the Applicant's reason that he was seeking advice to Hon. Jaji Kiongozi and later to Hon. Chief Justice on the remedies to his dissatisfaction does not at all constitute good cause **in accordance with Judicial principle**. I say so since ever since the Parliament enacted statutes in respect of assisting the procedures in litigation of cases, Law of Limitation Act, Cap. 89 and other Laws, then every remedy of whatever case, is to be found in those respective statutes judiciously.

The laws are static and fair to every Litigant even in a situation where under the circumstances the Applicant is a layman. It hardly needs to be over emphasized that the Court is a creature of statutes. Its business be it in dealing with matters of original jurisdiction, appeals, revisions, reviews, references, etc, is to use and apply laws respectively. This is so because the central role of the courts is to apply rules of procedure in the Administration of Justice. On a number of occasions, this Court has referred to the words of **Collins RM** in the **MATTER OF AN ARBITRATION**

BETWEEN COLES AND REVENSHEAR (1907) 1 KB 1 in which it was stated that:

The work of the rules of procedure were likened to that of hand maid rather than mistress. For this reason, in order to ensure that the machinery of administering justice is not hampered, the court is duty bound to apply the rules at all times stringently. There is no exception provided under the rules for a relaxed application when layman is involved as in the case before the court. More so, when it involves non-compliance with the rules on aspects which goes to the root of the matter taking the time consumed from and decision to the remedy found to forward on one's dissatisfaction, administratively instead of taking legal procedures.

Failure to file a matter within the prescribed time under the law, goes to the root of the matter. This is so since on the other side, the court has also to observe the rights of the other party to the litigation on the endless and untimely litigations. The consequences are fatal. On this matter particularly, I cannot therefore entertain the Applicant's plea for lenience in applying the rules upon the fact that he was seeking advice upon complaint in time he was supposed to take legal action. My decision lies on the point that the Applicant cannot be served in isolation to other Litigants for a reason of being layman.

It may as well be pointed out at this juncture that notwithstanding the fact that the Applicant is a layman, with proper advice and a modicum of diligence, the proper course could have been followed. After the decision of my learned Brother Shangwa J., the Applicant could have gone to the remedies availed in the statutes instead of the administrative remedies

For the above advanced reasons, **I accordingly dismiss the Application with costs for want of merits.**

It is so ordered.

Right of Appeal Explained.



L. E. MGONYA
JUDGE
11/10/2019

Court: Ruling delivered in chambers in the presence of the Mr. Mlelwa, Advocate for the Respondent, the Applicant and Ms. Emma RMA, this 11th day of October, 2019.



L. E. MGONYA
JUDGE
11/10/2019