

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**CIVIL APPEAL NO 22 OF 2019**

**BETWEEN**

**MGABO YUSUPH \_\_\_\_\_ APPELLANT**

**VERSUS**

**CHAMRIHO YUSUPH \_\_\_\_\_ RESPONDENT**

*(Arising from the Decision and Orders of the District Court of Bunda at Bunda Hon. Manento RM,  
in Miscellaneous Application No 26 of 2019, dated 21.11.2019)*

**JUDGEMENT**

Date of last order: 29.04.2020

Date of judgment: 08.05.2020

**GALEBA, J**

In this appeal, parties are brothers; the respondent is the elder brother of the appellant. Before this Court the appellant is challenging the ruling of the district court of Bunda, Hon. Manento RM, which dismissed his application for extension of time to appeal against the decision of Bunda Urban primary court in civil case no 36 of 2016, Hon. Kashushura PCM. In the primary court, the appellant's claim of Tshs 10,966,904/= was dismissed.

The background in brief, is that the urban primary court at Bunda delivered the judgment that aggrieved the appellant on 25.07.2019. No appeal was lodged up to 24.09.2019 when he filed an application for extension of time in the district court as by that time he was already out of time to lodge an appeal. The reason cited for the delay was that the applicant, now appellant fell sick and had to attend medical attention from hospitals. The district court was not

convinced with that reason so it dismissed the application. It is this dismissal that the appellant is challenging before this Court.

The appellant filed two grounds of appeal, but when the appeal came up for hearing, Mr. Emmanuel Paul Mng'arwe learned advocate opted to abandon ground 2 and retained only the following ground of complaint;

***"1. That the district court erred in law and fact in failing to take into consideration that sickness is a sufficient ground for extension of time within which to file an appeal out time."***

In supporting that ground Mr. Mng'arwe submitted that in supporting the application in the district court, the appellant tendered a document from **Bunda Designated District Hospital** dated **14.08.2019**, to demonstrate that the appellant fell sick after the judgment of the primary court, but the district court did not treat that as a valid ground for extension of time. Counsel cited **CIVIL APPLICATION NO 6 OF 2010 BETWEEN KAPAPA KUMPINDI VERSUS THE PLANT MANAGER TANZANIA BREWERIES CA UNREPORTED** at page 4 where the Court of Appeal held that sickness is a ground for extension of time.

In reply, Mr. Chamriho Yusuph, who appeared in person, submitted that in the district court there was no serious ground of delay demonstrated. He submitted that the letter which the appellant tendered in court show that he went to hospital just once. He stated that in the district court the appellant did not tell the court in which ward he was admitted or even the amount he paid for medical expenses and that the appellant did not have even any hospital number card. So he submitted that the district court was right to dismiss the appellant's application.

Legally speaking, for extension of time to be granted there must be demonstrated sufficient cause of the delay. See **KALUNGA AND COMPANY ADVOCATES VS NATIONAL BANK OF COMMERCE LIMITED [2006] TLR 235** at page 235 the Court of Appeal stated that;

***“(i).....the Court has a wide discretion to extend time where the time has already expired, but where there is inaction or delay on the part of the Applicant, there ought to be some kind of explanation or material upon which the Court may exercise the discretion given.”***

Similarly in **CARITAS KIGOMA VERSUS KG DEWSI LTD [2003] TLR 420** at 421 the Court of Appeal held that;

***“(ii) In an Application for extension of time, the question to be considered is whether sufficient cause has been shown by the Applicant for the delay in applying to set aside the ex parte judgment.”***

Having established that position, the issue before this Court is whether the appellant demonstrated sufficient cause in the district court to deserve extension of time.

First I agree with Mr. Mng'arwe that sickness is a ground for extension of time, but I do not agree with him that every time that the reason of illness is cited then courts must extend time; sickness or illness becomes a ground for extension of time only when it is proved that indeed it is the sickness that caused the delay. Just mentioning it does not do.

In the district court, the appellant presented a letter from **Bunda Designated District Hospital** dated **14.08.2019**, with the following substance;

**“14.08.2019**

**WHOM IT MAY CONCERN**

**REF; MEDICAL REPORT OF MGABHO YUSUPH 32 YEARS OLD**

**Kindly refer to above named attended in our health facility and diagnosed with allergic Retino pathy, kept on Dexachloramphenical and linked to Ophthalmotogist clinic.**

**Your clinician on duty**

**(Sgd)  
CO Suleiman  
FOR MEDICAL OFFICER INCHARGE”**

Although Mr. Mng'arwe submitted that the district court was wrong by refusing to rely on the above document but he told this Court that he himself was not sure of the scientific terms used in that document for him to be able to discern comprehensibly the information that the document was meant to convey. In other words, if the appellant and his advocate were unable to understand clearly the information conveyed by the material they were relying upon to convince the court to grant orders they wanted, how could it be possible for them to blame the court for not relying on the same material they do not understand.

At least the understanding of this Court of the text in that document is that the appellant was diagnosed with the disease in the retina of his eye, given medicine (**dexa chloramphenicol**) and finally referred to an ophthalmologist (an expert in clinical and medical disorders arising from eye ailments) clinic hopefully for further clinical attention.

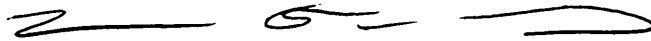
The point is whether that information which is conveyed by the above letter did really constitute sufficient reason for the appellant's failure to file the appeal in time counting from 25.07.2019.

In this case I have considered submission of parties in this appeal and also the reasoning of the district court. I am inclined to agree with the court because, **first**, the document tendered before it does not state anything on the seriousness of the appellant as a sick person and **second** the document does not state that the appellant stayed in hospital that issued it for any number of days. In actual fact what the letter states is simply that the appellant attended to **Bunda DDH**, was examined, given herbs and referred to the eye specialist. In that information there is no way the district court would have scanned any sufficient reasons to explain the delay for filing appeal. There was not any sufficient cause to explain the delay. Because of

that, this court cannot therefore interfere with the decision of the district court.

In the circumstances, the sole ground of appeal raised is overruled and there being no anymore grounds of appeal, the entire appeal fails and the same is dismissed. Finally as parties are brothers I make no orders as to costs.

DATED at MUSOMA this 8<sup>th</sup> May 2020



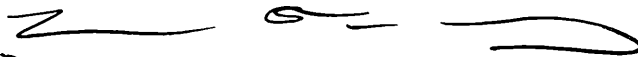
Z. N. Galeba

**JUDGE**

**08.05.2020**

**Court;** This judgment has been delivered today on 8<sup>th</sup> May 2020 in the absence of parties but with leave not to enter appearance in chambers following the corona virus outbreak globally and the medical advice to maintain social distance between individuals.

**Order;** Sufficient copies of this judgment be deposited at the Judgment Collection Desk for parties to collect their copies free of charge.



Z. N. Galeba

**JUDGE**

**08.05.2020**

