

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

MISC APPLICATION No. 310 OF 2019

(Originating from Matrimonial Appeal No. 28/2018 of Kinondoni District

Court delivered on 28th day of March, 2019 Hon. Kiliwa, RM)

FRANK LEONARD SANGA.....APPLICANT

Versus

ANETH ABDUL MHINA.....RESPONDENT

RULING

17.03.2020 - 12.05.2020

J. A. DE-MELLO J;

An **Extension of Time** made under **section 25 (1) b** of **Magistrate Court Act Cap. 11 R.E. 2002** supported by Affidavit of **Frank Leonard Sanga** is on record and, of which this Court is moved.

The ground upon which such extension is sought is that:

1. "The Advocate who entrusted to collect copies of judgment requested the same late"

At the hearing of the said Application, both the Applicant and, the Respondent are lay and, un-represented. It the Applicant's submissions that, if not for his Advocate's r negligence, and duly instructed, copies of judgment would have been timely collected in which the Applicant had no hand in it at all. Further that, true the copy judgment was ready for collection, but lately applied by this same Advocate and only to find time had expired. This he finds quite sufficient and prays for grant of his prayer.

Notwithstanding the reason above, the Respondent, while acknowledging the remedy to be the one as provided under **section 25 (1) b of Cap. 11**, cautions the Court to be careful lest it is intended to misuse the Court's precious time but, rather to protect rights of people who failed to exercise the right to appeal within prescribed time due to sufficient reasons and, not mere negligence and, hence a deliberate delaying tactic to justice. As admitted, the Respondent observed, it being pure negligence hence insufficient. Cases of **Michael Lessani Kweka vs. John Eliyafye (1997) T.L.R. 152, Bushiri Hasan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (Unreported)** and, ~~Karibu~~ **Karibu textile Mills vs.**

Commissioner General (TRA), Civil Application No. 192/20 of 2016 (Unreported) to bring home the point. Otherwise and, on a higher note he found the Application baseless and, prayed for its dismissal.

It is negligence and, that of the Applicant's Advocate which the Applicant advances as reason for delay. My perusal from Court file has it that copies of judgment were ready for collection since the **29th of March, 2019** with this Application filed on the **13th June, 2019**, more than **fourty (45) days** that, the law provides. In fact almost seventy three days. Let it be borne in mind the powers of this Court to or not grant such prayers are purely discretional but, judiciously exercised. Good and, sufficient causes are however very paramount, lest the Court turns into mockery of justice. Now the controversy has always been on what amounts to sufficient cause. In the case of **Attorney General vs. Tanzania Ports Authority & Another, Civil Application No. 87 of 2016 (Unreported)** the Court had observed as follows:

"What amounts to good cause includes whether the application has been brought promptly, absence of any invalid explanation for delay and negligence on the part of the applicant"

Obviously and, as observed, it is negligence alone both in the Affidavit as well as oral submissions, there is another requirement which demands consideration that of accounting for each day of delay. I am subscribing to the views expressed by the Court in the case of **Mwanahamisi Kiangi vs. Coretha Kapingu, Civil Appeal No. 2 of 1994**, and **Allison Sila vs. Tanzania Harbours Authority, Civil Reference No. 14 of 1998**.

In **Mrs Mwanahamisi Kiangi (supra)** the Court of Appeal stated;

“delay of one day is fatal especially where no sufficient reason for the delay is given”.

I am even attracted by the decision in the Ugandan case of **Mutaba Barisa Kweterana Ltd. vs. Bazirakye Yeremiya & Another, Civil Appeal No. 158 of 2014** stating;

“That a mistake or in advertence of counsel should not be visited on the litigants”.

Similarly, was what the case of **Deodati Dominic Kahanda & Another vs. Tropical Fisheries (T) Ltd. & Two Others, Misc. Commercial Application No. 200 of 2017**, endorsing what the case of **Transport Equipment Ltd. vs. DP Valambhia [1993] T.L.R91** where it was held;

"what is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time."

Unfortunate as it may appear, ignorance of law not an excuse either, the Applicant being lay, but seemingly the presence of an Advocate who handled the matter at Trial and whose Affidavit would have made a huge difference but missing. The ground is insufficient for this Court to invoke its discretionary powers to grant the prayers sought.

I accordingly do hereby dismiss this application.

Costs in the cause.


J. A. DE-MELLO

JUDGE

12/05/2020