

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 416 OF 2019**

(Arising from the Judgment of the High Court in PC Civil Appeal No. 30 of 2018 dated 25/10/2018 before Hon. B.R. Mutungi J, Originating from in Civil Appeal No. 99 of 2016 of Temeke District Court and Decision of Temeke Primary Court in Probate No. 218 of 2013)

**MWEMA MWINGE (Administratrix of the estate of  
the late ATUJUANI ABDALLAH MKUMBA) ..... APPLICANT**

**VERSUS**

**DHARAU MUSSA (Administratrix of the estate  
of the deceased ABDALLAH SALUM MKUMBA) ..... RESPONDENT**

**RULING**

13<sup>th</sup> May & 22<sup>nd</sup> May, 2020.

**E. E. KAKOLAKI J**

Before this court is an application for extension of time to file a review to this court against its decision dated 25/10/2018 in PC Civil Appeal No. 30 of 2018. The application has been preferred at the instance of the applicant under section 14(1) of the Law of Limitation Act [Cap. 29 R.E 2002], supported by the affidavit of the applicant **Mwema Mwinge**.

The respondent on her side through the counter affidavit sworn by **Dharau Mussa**, vehemently opposed the application. Both parties in this matter are unrepresented but the applicant is a beneficiary of legal aid from Tanzania women Lawyers Association (TAWLA) for documents drawing only. It was agreed that the matter be disposed by way of written submission, the submissions which were filed timely save for rejoinder submission by the applicant who opted to dispensed with.

The applicant in this application had filed her appeal in this court challenging the decision of Temeke District Court in Civil Appeal No. 99 of 2016 which was decided in respondent's favour. The decision was announced on 25/10/2018. No appeal was preferred against that decision; instead the applicant opted for review only to find herself time barred as a result the present application for extension of time.

It is submitted by the applicant that this court has discretionary powers to grant the application for extension of time upon the applicant stating sufficient reasons or good cause for the delay. What amount to good cause is relative one and is dependent upon circumstances of each individual case. That, that legal position is well stated in the case of **Ehangir Aziz Abdulrasul Versus Balozi Ibrahim Abubakar and Bibi Sophia Ibrahim**, Civil Application No. 79 of 2016.

Stating the reasons for her delay in filing review the applicant contended that when the judgment sought to be reviewed was pronounced on 25/10/2018 she was under legal aid of Women Legal Aid Centre (WLAC). That soon after that she was advised to collect the said judgment and decree in which she wrote a letter to court requesting the same and paid several follow-ups before securing them. That upon submitting them to WLAC her legal counsel did not advise her properly

on proper course to take only to find that time for the appeal had lapsed. Being dissatisfied with the legal aid provided by WLAC the applicant sought another legal aid from TAWLA. By then the time within which to appeal had expired as a result she resort to this application for extension of time to file the review. She is of the view that the fact that she is layperson who was supposed to be properly directed and advised but ended up being misdirected, that fact alone amount to sufficient reason to justify her delay. That what constitute sufficient reason cannot be laid down by hard and fast rule; it must be determined by reference to all the circumstances of each particular case. She argued that position of the law was clearly stated in the case of **Regional Manager, Tanroads Kagera Vs. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (Unreported). Taking into account the foregoing submission, the applicant prayed this court to grant the application.

On her side the respondent resisted the application, accusing the applicant of her style of preferring unmeritorious applications and appeals in order to frustrate and deny her from peaceful enjoyment of the fruits of the case since 2013 as well as abuse court process and consume court's precious time. On the reason of being misdirected by WLAC on the proper course to be taken advanced by the applicant it is the respondent's response that that statement is hearsay as it ought to have been proved by affidavit of the third party from WLAC. Otherwise this court should not rely on it she submitted. She invited this court to consider its decision in Misc. Civil Application No. 55 of 2019 between the two parties when the applicant's application for extension of time was struck out as the affidavit in support of the same was defective for containing unverified information of WLAC the third party as it is in this

application. Lastly she argued that the two cases cited by the applicant though referring to what amount to sufficient reasons and the need of the court to consider circumstances of each case the applicant has failed to advance sufficient reasons to warrant this court exercise its discretion judiciously, thus the same are inapplicable here. She added that defences of ignorance of law and negligence of the advocate have never been good grounds for extension of time. On the foregoing submissions she urged the court to dismiss the application for it has been heard on merit as it was rightly decided in case of **Joseph Ntongwisangu and Another Versus The Principal Secretary Ministry of Finance and Another**, Civil Reference No. 10 of 2005.

In short that is the parties' submission. As rightly submitted by the applicant this court has discretion to grant the application upon good cause shown by the applicant. And that what amount to good cause is relative and depends upon circumstances of each individual case as stated in the case of **Ehangir Aziz Abdulrasul** (supra). In the case of **Jumanne Hassan Bilingi Vs. Republic**, Civil Application No. 23 of 2013 the Court of Appeal expounded further the term "good cause" when stated:

*"In essence, what amounts to good cause is upon the discretion of the Court and it differs from case to case. But, basically, various judicial pronouncements defined **good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time.**"* (emphasis supplied)

Now the main issue for determination before me is whether the applicant has advanced sufficient reasons or good cause to warrant this

court exercise its discretion to either grant the application or not. The only reason advanced by the applicant is that after collecting the judgment and decree sought to be reviewed being layperson she approached her legal counsel at WLAC who failed to advise her properly on what course to be taken until when she decided to seek guidance from TAWLA only to find herself time barred to lodge notice and appeal as a result opted to file the application for review out of time. That, that reason amounts to good cause which this court should consider when granting the prayers sought. In opposition the respondent submitted that what is stated by the applicant about consultation with WLAC is hearsay as there is no evidence from WLAC by way of affidavit to prove all those stated facts. I am in agreement with the respondent's contention that the purported applicant's consultation with WLAC is hearsay as the same ought to have been supported by the affidavit from the counsel who was attending her there. In absence of such affidavit it is difficult for this court to believe her story for she might not have gone there for consultation after collection of the judgment and decree. Further to that in paragraph 9 of her affidavit in support of the chamber summons the applicant stated that on 14<sup>th</sup> of December, 2018 she visited TAWLA's offices and was told that it will remain closed until 14<sup>th</sup> January, 2019. So she had to wait until that date in order to access the services. This fact in my opinion also ought to have been proved by the officer from TAWLA by way of affidavit in order to accord it credence as evidence. As the same is missing that fact remains unproved. There are guiding guidelines for the court to establish whether the applicant has advanced good cause to warrant extension of time or not. Propounding on those guidelines the Court of Appeal in the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustee**

**of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported – CAT) held that:

*"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrary. On the authorities however, the following guidelines may be formulated;*

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law sufficient importance, such as illegality of the decision sought to be challenged."*

Further to that I would wish to add that in accounting for the delay the applicant must account for each and every day that passed beyond the prescribed period of time. This was the position in the case of **Alman Investment Ltd Vs Printpack Tanzania and Others**; Civil Application No. 3 of 2003 (Unreported) that;

*"Applicant ought to explain the delay of every day that passed beyond the prescribed period of limitation."*

In this matter one would expect the applicant to advance reasons explaining what prevented her from filing the application in time. No good reason has been advanced to account for each and every day of delay for more than (10) ten months from 25/10/2018 to 16<sup>th</sup> August 2019 when this application was filed. Even if we are to believe applicant's story that there was a delay on advising her by WLAC on a proper course to be taken until when she accessed the services of TAWLA on 14<sup>th</sup> January, 2019, there is no material fact or evidence to account for delay for the period of more than (7) seven months from 14<sup>th</sup> January, 2019 up to 16<sup>th</sup> August, 2019 when this application was filed which in my opinion is inordinate delay. To me such inordinate delay is a sign of lack of diligence on the part of the applicant to prosecute her matter. I therefore agree with the respondent in that the two cases cited by the applicant in support of her application apart from supporting the position that this court has discretion to extend time and that each case has to be considered on its circumstance they are not applicable to this matter. Considering the circumstances of this case the applicant though alleging to be a layperson legally aided by TAWLA ought to have demonstrated sufficient reasons to account for the delay in filing the application one of them being why she failed to file the appeal and instead opted for review. It is trite law that ignorance of law is not good cause for extension of time. See the case of **Hadija Adam Vs. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported) and **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported).

In the event, I would conclude that, under the circumstances of this application, the applicant has failed to demonstrate good cause that

would entitle her extension of time as sought. The application is consequently hereby dismissed with costs.

It is so ordered.

DATED at DAR ES SALAAM this 22<sup>nd</sup> day of May, 2020.



E. E. KAKOLAKI

**JUDGE**

22/05/2020

Delivered Dar es Salaam today on 22/05/2020 in the presence of both Applicant and Respondent and **Ms.** Lulu Masasi, Registry Officer.



E. E. Kakolaki

**JUDGE**

22/05/2020