

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION No. 1 OF 2020

GOLDEN CRESCENT ASSURANCE.....APPLICANT

Versus

YUSTA EZEKIEL NJAU.....RESPONDENT

RULING

22nd March - 25th June, 2020.

J. A. DE-MELLO J;

This Application is made under **S. 14 (1)** of the **Law of Limitation Act Cap. 89 R.E 2002, Section 93** and **95 of the Civil Procedure Code Cap 33 R.E 2002**, in which the Applicant seeks for the following orders:

- a) That, the Court be pleased to extend time for the Applicant to file Appeal Out of Time against the decision of the District Court of Dar Es Salaam at Ilala in Civil Case No. 59 of 2015.**
- b) Costs of this Application be provided.**
- c) Any other order (s)/relief(s) this Honourable Court may deem fit and just to grant.**

The Applicant was represented by **Catherine/Solomon** learned Advocate while **Nafikile Elly Mwamboma** an Advocate too represented the Respondent. On the **14th April, 2020** in presence of both Counsels as the

Court granted prayers to have the matter heard by way of written submissions, and both are in compliance.

Citing while expounding on Learned Counsel for the Applicant submitting **section 14 (1)** of the **Law of Limitation Act Cap 89 RE: 2002** which provided;

"Notwithstanding the provision of this Act, the Court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an Appeal or an Application, other than an Application for execution of a decree, and an Application for such extension may be made before or after the expiry of the period of limitation prescribed for such appeal or application".

Further, is **section 93** of the **Civil Procedure Code Cap 33 R.E 2002** which provides;

"Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired".

That the time prescribed for lodging an Appeal **from District Court to High Court** is **ninety (90) days** from the date of Judgment as provided under **Part II, Item I** of the **Law of Limitation Act Cap 89 R.E: 2002**, which the Applicant is late but with reasons for delay being late supply of the copy of the judgment and decree, despite a letter to Court requesting to be supplied with the copy on **15th March, 2017** the Applicant wrote for copies of the Judgment, Decree and, Proceedings herein annexed as **P-1**. Further that, even after several attempts, ~~it is~~ until the **7th September, 2017**, the

Applicant received them as annexed herein as **exhibit P-2 annexure P-2**. It is here then that the lodged this Appeal on the **6th day of October, 2017**, as **Civil Appeal No. 219 of 2017**, termed as **Memorandum of Appeal** annexed as **exhibit P-3**. While this was the position, on the **18th May, 2018**, the Respondent filed an objection that the Appeal is Time Barred, which **Hon. Dr. Ngwala, J**; upheld as she **Struck it Out** stating that, the exclusion of time waiting for the copy of the Judgment and Decree is not automatic, as shown in **exhibit P-4**. It is Counsel's prayer for grant of the Application, considering the above.

In reply, Counsel for the Respondent is of firm view that, the Applicant has failed to support her submissions with any authorities as was observed in the case of **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Co. Ltd vs. Mbeya Cement Co. Ltd and National Insurance Corporation (T) Ltd [2005] TLR 41** at page **48**, where he stated categorically that; "**...I will, however, have to make few observations regarding the contents of Mr. Nyangarika's written submissions. Mr. Nyangarika learned Counsel, has attached numerous annexures to his submissions. It is now settled, that a submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence. In principle all annexures, except extracts of judicial decision or textbooks, have been regarded as evidence of facts. The annexures to submissions has been condemned by several decisions of this Court (see Veta vs. Ghana Building Contractors; and, M. Rutakyamura vs. Peter Joseph [1990] TLR 49. They all have held**

that "where there are such annexures, they have to be expunged from the submission and totally disregarded". I will do the same in respect to the attached to Mr. Nyangarika's written submissions. All the documents annexed to his submissions are accordingly expunged, and shall be ignored". (Emphasis added).

Further that, and, as a matter of general principle, the mandate to grant extension of time is purely discretionary upon the Court, though judicially exercised on the basis of the following guidelines, inter alia;

- a) The Applicant must account for all the period of delay;**
- b) The delay should not be in-ordinate;**
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to pursue;**
- d) If the Court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance; such as an illegality of the decision sought to be challenged.**

It is his firm contention that, much as the Applicant wrote a letter on the **15th March, 2017** to be supplied with copies of the judgment, decree and proceedings for appeal purposes, there is however no explanation as to days between **3rd to 14th March, 2017** almost twelve (**12 days**) without accounting for the delay. She totally failed to account for these twelve (12) days. There is even no evidence to support the Applicant's averment that, several attempts were made to follow up to access the copy of the judgement as between **15th March, 2017** as alleged until when received on the **7th September, 2017** as alleged. Again soon after receiving it is

until the **6th of October** that, she lodged making it another **twenty nine days (29)**. The Applicant's failure to act promptly and diligently in pursuing her appeal exhibit laxity and negligence. In the case of **Samwel Munsiro vs. Chacha Mwikwabe, Civil Application No. 539/08 Of 2019 (unreported), Mmilla, J.A.**, had this to state;

"It should be insisted here that the applicant **is duty bound to account for every single day of the delay as was observed in the** case of **William Shija vs. Fortunatus Masha [1993] TLR 203**" (emphasis With this regard, one would have expected her to take refuge to **section 21 of the Law of Limitation Act Cap. 89 R.E 2019] (LLA)** as the Court of Appeal, did observe in the case of **Stephen B. K. Mhauka vs. The District Executive Director Morogoro District Council, Secretary Public Service Commission & AG, Civil Application No. 68 of 2019 (Unreported)**, as opposed to, **section 14 of the LLA and section 95 of the Civil Procedure Code [Cap. 33 R.E 2019]**. It is trite principle of law that, "**Lex specialis Derogate legi Generali**" (the specific law derogate the general law), he stated. Not even the date which **Ngwala, J; Strike it Out**, whose vacuum has revealed a **seventy five (75) days** lapse from **20th of September 2019 to 4th of December 2019**. There is no any explanation and or evidence to that effect. In **Stephen's case supra**, it was held that,

"It is trite law that, an applicant applying for extension of time must satisfy, that he acted very expeditiously and that the application has been brought in good faith. Furthermore, it is incumbent on the applicant to account for every day of the delay."

In the case of **Davis Bernard Haule vs. National Microfinance Bank Pic (NMB), Civil Application No. 195/9 of 2019 (Unreported)**, where **Kitusi, J.A.**, categorically stated inter alia that;

"The question is whether the applicant has shown good cause for not filing his intended appeal... here is no good cause shown because at best what we have here is counsel's misconception or ignorance of the law, which has never been considered as good cause."

Counsel for the Respondent believes that the Applicant is playing delaying tactics, with a view of hindering the Respondent from enjoying the fruits of his decree, as he prays for dismissal of the Application with costs.

Rejoining, Counsel for Applicant asserts that, where there are specific provisions of law, no case law is required, considering that case laws are made to support an argument which is not provided under any law against what this application is for extension of time is provided under **section 14 (1) of the Law of Limitation Act Cap. 89 RE: 2002 and section 95 of the Civil Procedure Code Cap. 33 RE: 2002**, which allows the Court to extend time for the Applicant to Appeal Out of Time, satisfied that there are reasonable or sufficient causes for such delay. What amounts to sufficient reasons has not been defined in law he submits, but in the case of **Musa and Others vs. Wanjiru and Another [1970] EA 481** that;

"Normally sufficient reasons for an extension of time must relate to inability or failure to take the particular steps".

In the case of Samson **Kishosha Gabba vs. Charles Kigongo Gabba [1990] TLR 133** held that in determining whether or not to allow an

application for leave to appeal out of time the Court has to consider reasons for the delays as well as the likelihood of success of the intended appeal. At **page 136, Mwalusanya, J;** as he then was, held; **"If the District Magistrate had considered those above mentioned fundamental it would have granted leave to appeal out of time, despite the fact that the appellant had delayed. After all the delay was not very long, but only five months. And so I allow this appeal so that the appeal is filed within 30 days from today".**

It is Counsels concern that the Respondent has totally misconceived the principle of accounting for each day of delay, which speaks for itself "account for each day of delay". The twelve days referred to by the Respondent, are not days of delays, since the Applicant was within the ninety (90) days provided under **Part II, Item I of the Law of Limitation Act Cap. 89 R.E: 2002.** The ninety (90) days were to lapse on **31st May, 2017** before the **15th March, 2017** time when the Applicant had applied for judgment hence within time to Appeal. The time requisite for obtaining copy of the Judgment and, Decree is excluded from computation of time as provided under **section 19 (2) of the Law of Limitations Act Cap 89 R.E 2002** which states;

"in computing the period of limitation prescribed for an appeal, an application for leave of appeal, or an application for, the period of time requisite for obtaining a copy of the decree order appealed from or sought to be reviewed, shall be excluded".

This therefore means, ninety (90) days commenced to run against the Applicant from the date of obtaining copies of the judgment and decree

which as on **7th September, 2017**, the position stated by the Court of Appeal case of the **Registered Trustees of the Marian Faith Healing Centre (Wanamaombi) vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese, in Civil Appeal No. 64 of 2007** that; **"In view of what we have endeavored to show above, and in the light of section 12) (supra), it follows that, the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree, ought to have excluded in computing time. Once that period was excluded, it would again follow that, when the appeal was lodged on 19/12/2003 it was in fact and in law not time barred"**.

Similarly was in the case of **Charles Rick Mulaki vs. William Magero (HC) in Civil Appeal No. 69 of 2017** stated that; **"We understand there are two school of thought regarding the time and excluding the time of limitation. There are those who say time runs automatically, there are those who say, once time lapses it does it does not, exist on its own unless you apply for extension of time"**. This was in expectation of automatic exclusion of time which was supported in the case of **Registered Trustees of the Marian Faith Healing Centre (wanamaombi) vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese** (supra), which, Madam Judge Dr. A.F. Ngwala opted not to adopt and ended up strike out our appeal. The issue of ignorance of law is inapplicable since time when prosecuting Civil Appeal No. 219 of 2017 had to excluded, diligently invoked under **section 21(1) of the Law of Limitations Act Cap. 89 R.E 2002**, with no

intentions whatsoever of delaying the Applicant. Counsel insisted reliance to **Article 13 (6) (a)** of the **Constitution of the United Republic of Tanzania, 1977** praying for his Application be granted.

It is the principle of law as well as practice that in Applications of such nature, it is only whether or not the reasons advanced are good enough. Records from Judgment of the **District Court of Dar Es Salaam at Ilala in Civil Case No. 59 of 2015** which was delivered on the **2nd day of March, 2017**, the Applicant requested for copy of judgment on **15th March, 2017** and, true he was furnished on the **7th September, 2017**, for both copies of the Judgment and Decree. The Appeal was lodged on the **6th October, 2017**, **twenty-nine (29) days** after receipt and payments for the copies. However and as stated by the Respondent, accounting for each day is mandatory as was what the case of **Oceanic Bay Hotel vs. Real Insurance Tanzania limited (2013) EARL 214**, it was held that

'The delay is a delay even if it is a single day of a delay must be counted for.'

The Applicant's Affidavit and its shows that he requested for copy of judgment on **15th March, 2017**, and until **7th September, 2017** when they were supplied with the copies of the Judgment and Decree. This was not within the Applicant's fault but the Court. However, the Appeal was lodged on the **6th October, 2017**, **twenty-nine (29) days** after receipt and payments for the copies.

In the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustee of Young Women's Christian Association of**

Tanzania, Civil Application No. 2 of 2010, further and strict guidelines had to met namely;

- **The Applicant must account for all the period of delay.**
- **The Applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.**
- **If the Court feels that there are other sufficient reasons, such as the existence of point of law of sufficiency such as the illegality on the decision sought to be challenged.**
- **The delay should not be inordinate.**

You will but, agree with me that reasons advanced let alone the contravention in the Affidavit by annexing exhibits, the delay is inordinate, negligent and, insufficient, let alone absence of any points of law sufficient to exhibit any illegality over the decision. **Hon. Dr. Ngwala J**; did observe the same and which ties my hands rendering me "**Functus Officio**" much as it was **Struck Out**, on account of failure to account for the **twenty nine days (29)** as well as illegality, if any. I find nothing cogent rather tangible to exercise my discretion to grant as I dismiss the same with costs.

It is so ordered.




J. A. De-Mello

JUDGE

25th June, 2020