

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 826 OF 2018**

(Arising from Civil Case No, 170 of 2016)

**TANZANIA CIGARETTE COMPANY LIMITED .....1<sup>ST</sup> APPLICANT**

**SIMON KALIMABOX.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**OMARY MOHAMED IBRAHIM .....RESPONDENT**

**RULING**

**MASABO, J.:**

Being aggrieved by the decision of the Resident Magistrate Court for Dar es Salaam at Kisutu in Civil Case No. 170 of 2016, the Applicants Tanzania Cigarette Company Limited, and Simon Kalimabox, are desirous of appealing to this court. Prior to lodging their appeal, the time within which the appeal was to be filed lapsed hence this application. In their chamber application made under section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2019] they are jointly praying for an order for extension of time within which to file their appeal out of time. The application is supported by an affidavit deposed by their counsel one Yohanes Konda.

In the affidavit, Mr. Konda states that, the decision appealed against was delivered on 23/8/2018. Thereafter, the applicant through their counsel

logged a request to be supplied with copy of judgement and decree. The copy of judgement was supplied on 5<sup>th</sup> September 2019 but the copy of decree was not supplied. Later on, the applicants changed their mind and withdrew their instruction from their counsel and engaged a new counsel on 14<sup>th</sup> September 2018 who upon taking over the case file applied to be supplied with the copy of the decree and proceedings. The copy of the decree and the proceedings were finally supplied to the Applicant on 13<sup>th</sup> December 2018. On receipt of the decree they discovered that there was a disparity between the date of the judgment and the date of decree whereby the judgment was dated 13<sup>th</sup> August 2018 and the Decree was dated 23<sup>rd</sup> August 2018, thus the decree was defective. Having noticed the defect they sought for rectification but the same was yet to be supplied when this application was lodged on 28<sup>th</sup> December 2018. It was further deponed that there is an illegality in the judgment and proceedings in that the matter from which they emanate was time barred. The application was contested by a counter affidavit deponed by Ezekiel Fyandomo, learned counsel for the Respondent.

The application was heard in writing. Both parties were represented. The Applicant was represented by Mr. Yohanes Konda, learned counsel whereas the Respondent were represented by Ms. Anna Amon, learned counsel from the Legal Assistance for Victims of Accident (LAVA). In their submission, both parties are in agreement that section 14 of the Law of Limitation Act under which the application is preferred vests the court with discretion to extend the time with in which the applicants are to lodge their appeal. They are

equally in agreement that the exercise of discretionary powers under section 14 is to be done judiciously upon the Applicant demonstrating that there is a good cause. Several cases were cited in support. I need not mention them. It suffices to just say that I have accorded all the authorities a due consideration.

The bone of contention is whether the reason advanced by Respondent constitutes a good cause capable of justifying the exercise of the courts discretion and this is the only issue for determination by this court. For the Applicants it has been argued that the ground advanced consist of a good cause because, Order XXXIX rule 1(1) of the Civil Procedure Code [Cap. 33 R.E 2019] contains mandatory requirement that the memorandum of appeal be accompanied by a copy of the judgment and decree appealed against. Thus, in the absence of a valid decree, the Applicants could not lodge their appeal. The case **of Vodacom Tanzania Limited v Gregory Ishengoma**, Misc. Civil Application No. 470 of 2015, HC Dar es Salaam was cited as authority.

It was further argued that, the Applicant has demonstrated diligence in pursuit of their right in that, immediately after being supplied with the defective decree they sought rectification and before they were supplied with a valid decree, they lodged this application. The case of the **Tanga Cement Company Limited v Jumanne D. Masangwa and Amos Mwalwanda**, Civil Application No. 6 of 2001 (unreported) was cited in support. Further in support of this point it was argued that the duty to supply litigants with

copies of judgment and decree is that of the court hence the party should bear the blame (**Transcontinental Forwarders Ltd v Tanganyika Motors Ltd** [1997] TLR 328). Finally, it was submitted that there is an illegality which in itself constitutes a ground for extension of time as held in the **Principal Secretary Ministry of Defence and National Security V Devran Valambhia** [1992] TLR 185.

For the respondent it was argued that the reason advanced by the applicants do not suffice as good cause. According to the respondent the Applicant has failed to demonstrate diligence in pursuit of his right. He has failed the test of the law as stated in **Said Issa Ambunda v Tanzania Harbours Authority**, Civil Application No. 177 of 2004, Court of Appeal of Tanzania at Dar es Salaam (unreported). It was also argued that there is no disparity on the date as both, the judgment and decree bears one date that is, 23<sup>rd</sup> August 2018. On the point of illegality, it was submitted that there is no illegality because the matter was filed well within time.

I have considered the submission by both parties. It is certain that there is no universal definition of the term "good cause" for purposes of determination of applications of this nature. The existence or otherwise of a good cause is determined by looking the at the prevailing circumstances of each case (**Mang'ehe t/a Bukine Traders v Bajuta**, Civil Application No. 8 of 2016, Court of Appeal of Tanzania (unreported)). Several factors are taken into consideration and these include: the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if

the application is granted. These factors are expounded in a myriad of cases, including in **Zahara Kavindi and Another v Juma Swalehe & Others**, Civil Application NO. 4/5 of 2017 Court of Tanzania at Mwanza (unreported), where the Court of Appeal stated that there are four conditions to be considered in an application for extension of time namely:

- i. That the applicant must account for all the period of delay
- ii. The delay should not be inordinate
- iii. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and
- iv. If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance: such as the illegality of the decision sought to be challenged.

In the instant case, the decision was delivered on 13<sup>th</sup> August 2018. Considering that the duration within which to file the appeal is 90 days, the appeal ought to have been filed on or before 12<sup>th</sup> November 2018. This Application was filed on filed on 28<sup>th</sup> December 2018. The delay is therefore for an aggregate of 46 days counted from the 12<sup>th</sup> November 2018. This is obviously not an inordinate delay and, in my view, excusable.

Regarding the grounds, the applicant's affidavit and the submission thereto, reveal quite clearly that the delay was occasioned by reasons other than the applicant's negligence. In avoidance of repetition, it suffices to just mention that, the facts clearly demonstrated that the applicant took the necessary steps within time. Soon after the judgement he applied to be furnished with

the copy of the judgment and decree to enable him to exercise his right to appeal. The materials provided by the applicant has ably established that the delay was occasioned by the court in that, it did not furnish him with the decree on time and when he was finally furnished with the same, it was defective hence incapable of supporting the memorandum of appeal. I have carefully examined the copy of the judgment supplied to the court and the decree thereto. The disparity is vivid. The judgment is dated 13<sup>th</sup> August 2018 whereas the decree is dated 23<sup>rd</sup> August 2018. As correctly argued by the applicants, with this defect he could not lodge the appeal.

In fact, if section 19(2) of the Law of Limitation Act [Cap 89 R.E 2019] is applied to the facts of this application, it can be correctly be argued that when this application was made, the applicant was still well within time. Section 19(2) provides the following with regard to computation of time limitation for appeal purposes:

19 (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

This provision is a common subject and has been interpreted in numerous decisions of the Court of Appeal including in the case of **Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi vs. The**

**Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No 64 of 2007, Court of Appeal of Tanzania at Dar es Salaam (unreported) and **Sospeter Lulenga Vs. The Republic**, Criminal Appeal No. 107 Of 2006- Court of Appeal of Tanzania at Dodoma (unreported). In all these cases it has been consistently held that the days upon which the Applicant was waiting to be furnished with the judgment and decree should be automatically excluded from computation of time. In **Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi** (supra) the court had this to say:

“in view of what we have endeavored to show above, and in the light of section 19(2) (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 been excluded from in computing time. Once that 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” [emphasis added]

When this principle is applied to this application, it is vivid that the Applicant the time started to run against the applicant on 13<sup>th</sup> December 2018 when they were furnished with the decree. It is to be noted further that, in practice, when the judgment/decree supplied to the litigant is defective and it cannot be filed in support of the memorandum of appeal on account of that defect, the time for obtaining a decree for purposes of section 19(2) above is broadly interpreted to include the time within which the litigant was waiting to be availed with a correct decree. Going by this principle and

considering that up to 28<sup>th</sup> December 2018 when this application was lodged the applicants were yet to be supplied with the valid decree, the time had not commenced to run against them.

Based on what I have demonstrated above, and considering that the application has been in court for a long time during which the applicant must have been furnished with valid decree and the time must have run against them, I allow the application. The time with which to lodge the appeal is extended for 14 days with effect from the date of this ruling. Costs on the Respondent.

DATED at DAR ES SALAAM this 14<sup>th</sup> day of July 2020.

  
**J.L. MASABO**  
**JUDGE**

Ruling delivered in absentia owing to consistence absence of the parties  
this 14<sup>th</sup> day of July 2020

  
**J.L. MASABO**  
**JUDGE**

ORDER: Parties be notified.

  
**J.L. MASABO**  
**JUDGE**

