

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. CIVIL APPLICATION NO.178 OF 2018

*(Arising from Civil Appeal No. 5 of 2018 Originated from Mwanza Resident
Magistrate Court Civil Case No. 47 of 2013)*

SANDHU COACH LTD AND ANOTHER APPLICANT

VERSUS

BIGAMBO JEJE RESPONDENT

RULING

Last Order: 25.02.2020

Ruling Date: 28.02.2020

A.Z.MGEYEKWA, J

The applicant has instituted an application which is brought under Section 11(1) of the Appellate Jurisdiction Act and Section 14(1) of the Law of Limitation Act Cap 89. The Order sought is for an extension of time to file an application for leave to appeal against

the Judgement and Decree of the High Court of Tanzania at Mwanza dated 11th October 2018. The application is supported by an affidavit deposed by Obeid Elias Mwandambo.

In prosecuting this application, Mr. Elias Mwandambo, learned Advocate represented the Applicant while the respondent enjoyed the service of Mr. Laurian, learned Advocate.

The brief background to this matter is that before this court there was HC Civil Appeal No. 05 of 2018 which was scheduled for judgment. Following the transfer of the trial judge Maige J, parties were to be informed by Deputy Registrar on the date of the judgment. The appeal was decided on 11.10.2019 in the absence of the applicant. The applicant now applies to this court seeking for extension of time to file an appeal in the Court of Appeal of Tanzania on the reasons he stated forth.

In his submissions, Mr. Mwandambo, learned counsel for the Applicant prays this court to adopt the content of his affidavit. He submitted that he is aware that extension of time is vested in court

discretion and he has reasons to justify the delay. He submitted that he was the advocate for the appellant in HC Civil Appeal No. 5 of 2018 and he knew nothing on the deliverance of the judgment on 11. 10. 2018 until he made necessary follow-ups and become aware on 25. 10.2018.

The applicant citing the case of **Mugu and Another v Wanjiru and Another** [1970] EALR 281 and the case of **Mumero v Bank of Tanzania** [2006] Vol. 1 EALR 227. He also cited the case of **Karunya Company Advocate v NBC** [2006] TLR 235 insisting that, the respondent though directed by the trial judge to inform the Applicant, the respondent for the reasons known to him, failed to do that. He, therefore, prays this court to find sufficient reasons and allow this application.

Objecting to the application, Mr. Laurian, learned counsel for the Respondent prays this court to adopt the counter affidavit deponed by one Christina Bigambo Jeje and form part of his submissions. He submitted that the grounds by the applicant did not

demonstrate good reasons. He submitted that the applicant failed to account for 13 days he delayed to file the appeal and the respondent prays this court to dismiss the application with costs.

In his brief rejoinder, the Applicant's learned counsel submitted that he received instruction on 26. 10.2018 when the time limit was already expired and that is the reason for this Application. The applicant prays this court to grant the application.

To appreciate the merits of this Application, I find it necessary to reproduce Section 14 (1) Act, under which the application has been made thus:

*"14 (1) Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause,** extend the period of limitation for the institutions of an appeal or an application other than application for execution of a decree, an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application" (emphasis supplied).*

It is evident from section 14(1) of the Act that granting an extension of time is a matter of discretion of the Court predicated upon the Applicant exhibiting reasonable or sufficient cause behind the delay. However, the Applicant must account reasons for the delay to persuade the court. Thus, the central issue for consideration and determination is whether sufficient reasons have been advanced by the applicant to warrant the extension of time sought.

Basing on the submissions by the applicant, the reasons for his delay was a result of misinformation on the date the judgment which was delivered as stated in his affidavit. It is crystal clear on records that the judgment was pronounced on 11.10.2018 whereas, the Respondent and the Applicant were absent. The series of events was that the Applicant was waiting to be informed as ordered by the DR on the date of the pronouncement of the judgment and I find no proof on records that the Applicant was informed. On the side of the Respondent who objected the application, I find on records that he was instructed to inform the Applicant over the pronouncement of the judgment as it reads on the last page of the Judgment

pronounced on 11. 10. 2018. While the Applicant submits to this court that he was never informed and the Respondent claimed to have informed the Applicant but with no material proof to support his assertion. Dwelling in the decision in **Lesero v Mwarabu** Civil application No. 10 of 2015 (2016)TZCA 10 that:-

" Granting application for extension is a discretionary power. This discretionary power, however, is judicial in nature and must be confined to the rules of the reason and justice..."

Basing on what transpires in Civil Appeal No. 5 of 2018 I find that the Applicant's reason for delay is justifiable. The Respondent fails unreasonably to comply with what was agreed, as the court stated clearly on the judgment which was delivered in absence of the Appellant but with the undertaking by counsel for the Respondent Mr. Emanuel John to inform the Appellant and he fails to exhibit this court that the Applicant was dully and fully informed.

As the mandatory requirement of the law that a party who seeks extension of time must account for every day of delay and failure to do so, the Court cannot exercise its discretion in his favour. This position is reflected in several decisions of the Court of Appeal. In

Tanzania Coffee Board V Rombo Millers Ltd, AR CAT Civil Application No 13 of 2015(unreported) the Court reiterated its decision in **Bushiri Hassan V Latifa Lukio Mashayo**, Civil Application No 3 of 2007(unreported). In the circumstance of this application, I find that the Applicant on his submission did not account for every day of his delay after he was aware but considering the case of **Osward Masatu Mwinzarubi v Tanzania Fish processors LTD** CAT Civil Application No. 13 of 2010 Mwanza Registry) unreported where it was held that:-

*"What constitutes a good cause cannot be laid down by any hard and fast rules a **term good cause** is a relative one and is dependent upon the circumstance of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."*

The above being the circumstances and in view of the provision of Section 14 (1) of the Law of Limitation Act, Cap.141 [RE 2002] and the authoritative position mentioned above. I find that the

appellant has raised sufficient reason for his delay to file the appeal out of time.

For the reason stated hereinabove, the application for extension of time to file a leave to the Court of Appeal out of time is granted and the application be filed within fourteen (14) days from the date of delivery of this Ruling excluding weekend and public holiday days. Each party to bear his costs.

Order accordingly.

DATED at Mwanza this 28th February 2020




A.Z.MGEYEKWA
JUDGE
28.02.2020

Ruling delivered in the presence of Mr. Ally Zaidi, learned counsel holding brief for Mr. Laurine, learned counsel for the respondent.


A.Z.MGEYEKWA
JUDGE
28.02.2020