

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

MISC. CIVIL APPLICATION NO 477 OF 2018

(Arising from the decision of this court in Civil Case No. 176 of 2011)

**JOHN TIMOTHY NYASANGA..... APPLICANT
T/A JUST DEAR INVESTMENT**

VERSUS

**MINISTRY OF DEFENCE AND
NATIONAL SERVICE.....1ST RESPONDENT**

THE ATTORNEY GENERAL2ND RESPONDENT

RULING

MASABO J.:

Before me is an application for extension of time to file an application for review in respect of the judgment and decree of this court delivered on the 2nd March 2018. The application was made by chamber summons supported by an affidavit sworn by the Applicant, **John Timothy Nyasanga**, in which he deponed the grounds in support of the application. What can be deciphered from this affidavit is that, soon after the judgment was delivered, the applicant attempted to appeal before the decision to the Court of Appeal but he latter on changed his mind and opted instead to pursue a review. His intention could, however, not be fulfilled as the time within which to apply for review had lapsed. Hence this application. The application was sternly contested by the respondents in an affidavit deponed by Asante Hosea, Learned State Attorney.

Hearing of this application proceeded in writing. The Applicant was self-represented where as for the respondents were represented by Ms. Joyce Senkondo Yonazi, learned State Attorney. In their submissions, both parties converged on the fact that the extension of time is with in discretion of this court and is exercisable upon the applicant demonstrating a good cause. Further, on the part of the Applicant, it was submitted as narrated in the affidavit that, after the impugned decision being delivered on 2nd March 2018, the Applicant herein filed a notice of appeal before the Court of Appeal. Meanwhile he started to follow up for payment voucher from the 1st Respondent. The voucher was not furnished to him until 1st August 2018. Later, on 1st August 2018 he was supplied with proceedings and upon examining the judgment, proceedings, and the payment voucher he found that there was no need to appeal hence he lodged this application on 15th August 2018. The Applicant argued further that he has chances to succeed in the review because he has obtained a payment voucher which he could not produce during trial. It is his strong conviction that this is a good cause for extension of time.

For the Respondents, it was argued that the reason advanced does not suffice as a good cause. Thus, it fails the test of the well-established principle of law. It was further argued that, the applicant, apart from failing to adduce a good cause has not adequately accounted for the time of delay which indicates that the delay was actuated by his laxity and negligence in pursuit of his right.

Upon consideration of the submission by the parties, there is only one issue for determination, namely, whether the reason adduced by the

applicant constitutes a good cause warranting the enlargement of time within which he can file his application for review.

Before determining this issue, I will preface my ruling with a comment on two annexures appended to the applicant's submission which constitute a notice of appeal to the Court of Appeal and a payment voucher. Let me say straight forward that I will not attach any weight to the annexures because, appending annexures to written submission contravenes well established principle of law. The position of law as stated in **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Ltd v. Mbeya Cement Company Ltd and National Insurance Corporation (T) Limited** [2005] TLR 41, is that, annexures are not to be appended to the submission save where the said annexure is an extract of a judicial decision or text book. If the annexure appended to the submission is other than an extract of a judicial decision or text book, it should be expunged from the submission and totally disregarded. In this regard, I hereby expunge the two annexures and totally disregard them.

Regarding the merit of the application, the extension is sought to enable the applicant to apply for review. According to the item 3 of part III of the Schedule to the Civil Procedure Code [Cap 33 RE 2019], an application for review is to be lodged within 30 days after the delivery of the judgment/decreed sought to be reviewed.

In the instant application the judgment sought to be review was delivered on 2nd March 2018 whereas this application was lodged 15th August 2018. The total period of delay is approximately five months. Section 14(1) of the Law of Limitations Act under which this application is preferred, vests

this court with discretion to enlarge the time to allow the applicant to file its review. However, as stated earlier, this discretion is to be judiciously exercised upon the applicant demonstrating a good cause (see ***Benedict Mumello v Bank of Tanzania***, Civil Appeal No 12 of 2012 (unreported)). As there is no universal definition of the term good cause, the existence or otherwise of the good cause is established by looking at numerous factors. These include, the lengthy of delay (whether the delay is inordinate); whether the applicant has accounted for all the period of delay, whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in prosecution of the action; and existence of a point of law or sufficient importance such as the illegality of the decision sought to be challenged (See ***Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania*** (supra); also see ***Zahara Kavindi and Another v Juma Swalehe & Others***, Civil Application NO. 4/5 OF 2017 (CAT at Mwanza)(unreported).

As stated above, the delay is for a period of five months counted from 2nd March 2018 when the impugned decision was handed down to 15th August 2018 when this application was filed. In my settled view, this is an inordinate delay. Unless it is supported by a good cause it is not excusable. The two reasons for delay advanced by the applicant to wit: he was following up the payment voucher from the respondent and (ii) delay in being supplied with copy of the judgment are devoid of merit. What can be deciphered from the affidavit is that the payment voucher is a new evidence that the Applicant intends to produce in review after having failed to produce it during trial. By

any standard, this cannot constitute a good cause. Entertaining this explanation as a good cause would contravene the well-established principles regarding finality of litigation and would encourage vexatious and frivolous matters being filed in court in anticipation that after the conclusion of the suit, the judgment debtor will have time to collect new evidence and come back to the court at their own pace in total disregard of well-established principles pertaining to time limitations.

Regarding the second ground, although this would ordinarily constitute a good cause, in the instant case it falls short of being a good cause because there is no explanation as to why five good months lased before being furnished with the copy of judgment and proceedings. No evidence was appended to the affidavit in proof that the delay to obtain the said copies was not occasioned by the Applicant laxity and lack of diligence. Under the circumstances, the Applicant can not escape the label of negligence and lack of diligence in pursuit of his right.

In the final event, the application is dismissed with costs.

DATED at DAR ES SALAAM this 21st day July 2020



J.L. MASABO
JUDGE

