

**IN THE HIGH COURT OF TANZANIA
(MWANZA DISTRICT REGISTRY)
AT MWANZA**

MISC. CIVIL APPLICATION NO. 113 OF 2019

ZAINABU HARUNA RASHID APPLICANT

VERSUS

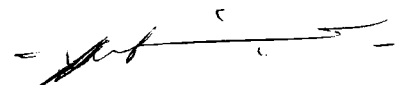
ALPHONCE KAPELA MTEMBEZI RESPONDENT

RULING

23rd April, & 1st July, 2020

ISMAIL, J.

The applicant in this matter seeks indulgence of the Court for grant of extension of time within which to file an appeal out of time. The intended appeal is against the decision of the District Court of Geita at Geita, in Civil Application No. 42 of 2018, delivered on 15th April, 2019, and allowed the appeal which was instituted by the respondent. The application is preferred under the provisions of Section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002 (now R.E. 2019), and it is supported by an affidavit of Zainabu Haruna, the applicant, setting out grounds on which the extension is sought. The ground for extension of time is found in paragraph 3 of the supporting affidavit which is to the effect she fell ill and

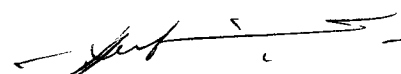


was attended to by a traditional healer, as evidenced by the hamlet chair's letter (annexure "ALI").

The application is strongly opposed by the respondent, through a counter-affidavit in which the respondent contended that the letter attached to the application is of no consequence and that a letter from a hamlet chair who is not a traditional healer who never treated the applicant and, as such, not sufficient to justify granting. The respondent further averred that copies of the said judgment and decree were supplied to the applicant on 6th May, 2019, meaning that she had sufficient time to lodge her appeal before she fell ill as she alleges.

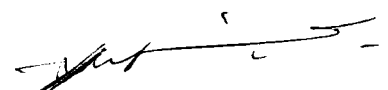
When the parties virtually attended to the proceedings on 23rd of April, 2020, a schedule was drawn for the filing of written submissions which would dispose of the applicant. Credit to the counsel, the submissions were filed timeously and in conformity to the schedule.

Submitting in support of the application, the applicant highlighted what she stated in the affidavit and expressed his hope and belief that the letter by the hamlet chair was strong enough to support her contention that her delay was as a result of a sufficient cause. She argued that the decision sought to be impugned is tainted with illegalities and irregularities,



the details of which were not laid bare. She prayed that the application be granted in order to give her a life line which will enable her to challenge the decision.

The respondent's submission began with stating the time prescription, as provided for under section 25 (1) (b) of the Magistrates' Courts Act, Cap. 11 R.E. 2002, which provides that appeals and revisions to court are preferable within 30 days from the date of the impugned decision. He contended that the decision sought to be appealed against was delivered on 6th May, 2019, while filing of the instant application was done on 7th August, 2019, three months later. On the alleged illness, the respondent contended that the evidence that purportedly supports the application was from a person who is neither a medical doctor nor a tradition healer who could swear an affidavit. In view thereof, the respondent argued, no sufficient cause had been given, and that the delay was nothing but a demonstration of gross negligence by the applicant. Referring to the decision in ***Yazid Kassim Makileki v. CRDB (1996) Ltd Bukoba Branch & Another***, CAT-Civil Application No. 412/04 of 2018 (Bukoba-unreported), the respondent contended that the applicant has not accounted for each day of delay to justify the delay. He urged the Court to dismiss the application for want of sufficient cause.



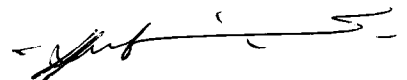
From these rival submissions, the Court's profound task is to pronounce itself on whether a case has been made out to warrant exercise of its discretion and grant an extension of time.

It is trite law that an application for extension of time can only be granted upon satisfaction by the Court that the applicant thereof has presented a credible case, and he has acted in an equitable manner. The rationale for it is as stressed in the persuasive decision of the Supreme Court of Kenya in ***Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others***, Sup. Ct. Application 16 of 2014 in which it was held:

*"Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault so as to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of courts which litigants **have to lay a basis [for], where they seek [grant of it]."***

A similar position was made in ***Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, CAT-Civil Application No. 2 of 2010 (unreported) wherein key conditions on the grant of an application for extension of time were laid down. These are:

- (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 he intends to take.*
- (d) *If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

In the instant application, both parties share the same fact. That in applications for extension of time, the party's success is conditioned on demonstration of reasonable or sufficient cause from which the Court will gauge the applicant's action. This condition is intended to tame applications submitted by parties who are at fault and are all out to benefit from their own inaction. The wisdom is consistent with the holding in ***KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another*** (1972) E.A. 503, in which it was held that ***"... no court will aid a man to drive from his own wrong."***

While the term sufficient cause derives no definite terms, courts have come up with circumstances from such cause may be inferred. In ***Henry Leonard Maeda and Another v. Ms. John Anael Mongi***, CAT-Civil Application No. 31of 2013 (unreported), it was held as follows:

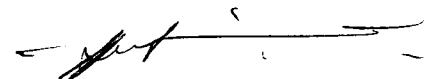
"... the courts may take into consideration, such factors as, the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted"



In ***Dephane Parry v. Murray Alexander Carson*** [1963] EA 546, it was emphasized that:

"Though the court should no doubt give a liberal interpretation to the words "sufficient cause", its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant."

The applicant's reason for the delay in taking action is her ailment and subsequent conveyance to a traditional healer as evidenced by the hamlet chairman's letter. The question that arises is: was this good enough a reason to justify the extension? The current legal holdings are to the effect that illness of a party constitutes a good reason for extension of time (See: ***Christina Aiphonce Tomas (as Administratrix of the late Didas Kasele) v. Saamoja Masinjiga***, CAT-Civil Application No. 1 of 2004 and ***Richard Mlagala & 9 Others v. Aikael Minja & 3 Others***, CAT-Civil Application No. 160 of 2015 (both unreported)). In this case, it is the hamlet chair who is taking trouble of justifying the incident in which he took no part. Assuming that the applicant was indeed indisposed, it was expected that such confirmation would come from the traditional healer by way of a supplementary affidavit, consistent with the holding in ***Isack***



Sebegele v. Tanzania Portland Cement, CAT-Civil Reference No. 26 of 2004 (unreported). In the absence of any such evidence, the contention is lacking in veracity. It is a mere afterthought which cannot be considered as the basis for the grant of extension.

The respondent has posed a potent question as to why no action was taken from the date the certified decisions were furnished to her on 6th May, 2019 to 20th June, 2019, when she allegedly fell ill. This is a spell of 44 days which have not been accounted for. The requirement to account for each day of delay has been emphasized in a multitude of decisions. In ***Bushiri Hassan v. Latina Lucia Masaya*** (Civil Application No. 3 of 2007 – unreported) it was held:

"...Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

See also: ***Karibu Textile Mills v. Commissioner General (TRA)***, CAT-Civil Application No. 192/20 of 2016.

The spell of inaction from 6th May to 20th June, 2019, depicts nothing but sheer lack of diligence which is inconsistent with sufficient cause.

The applicant has contended in her submission that there is an illegality in the decision sought to be impugned. Nothing of the sort has been stated in the supporting affidavit and no details of such illegality have

been shared. While it is clear that illegality constitutes the ground for extension of time, the alleged illegality must be disclosed and explained. (See: **John Tilito Kisoka v. Aloyce Abdul Minja**, Civil Application No. 3 of 2008). This is not the case here, and I don't think this needs to detain me. I simply reject it out of hand. In the upshot, I hold that the application has failed the test requisite for extension of time. Accordingly, I dismiss it with costs.

Order accordingly.

Right of appeal explained.

DATED at **MWANZA** this 1st day of July, 2020.




M.K. ISMAIL
JUDGE

Date: 01/07/2020

Coram: Hon. M. K. Ismail, J

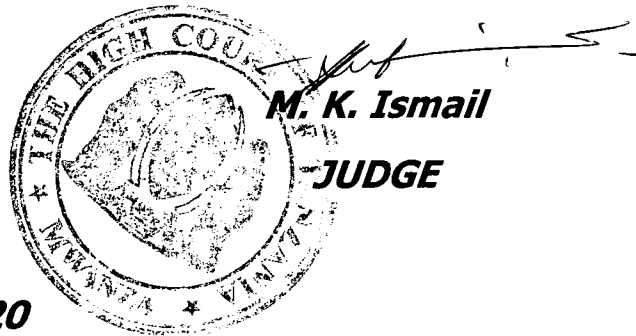
Applicant: }

Respondent: } Both present in person

B/C: B. France

Court:

Ruling delivered in chamber, in the presence of both parties in person and in the presence of Ms. Beatrice B/C, this 01st day of July, 2020.



At Mwanza

01st July, 2020