

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

MISC. CIVIL APPLICATION NO. 1 OF 2020

*(From Mbarali District Court Civil Appeal no 14 of 2014, Original Civil Case
No. 3 of 2014 from Chimala Primary Court)*

ARON ANJERO MYAVILWA..... APPLICANT

VERSUS

HAROLD KUAUNYA.....RESPONDENT

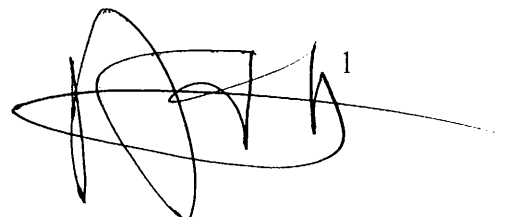
RULING

Date of last order: 09.7.2020

Date of Ruling; 30.7.2020

MAMBI, J.

This Ruling emanates from an application filed by referred as the applicant. In his application supported by an Affidavit the applicant filed an application (**MISC. Civil APPLICATION NO. 1 OF 2020**) for an application for an extension of time to appeal to this court out of time. In his application the applicants have prayed to this court to allow him to appeal against the decision of the District court out of time. The application is supported by an affidavit where the applicants have stated his reasons for their delay.



In their submissions, the applicant Counsel from OJ Law Chambers, Njombe briefly submitted that the applicant is seeking for an order for extension of time out of time against and the reasons for delay are stated at the affidavit. He also argued that there is a point of illegality that need to be discussed if an applicant is granted leave to appeal out of time.

He averred that it is an undisputed fact that the applicant could have filed his appeal within time but he has the good cause for delay.

In response, the respondent Counsel Ms Mkumba briefly submitted that the applicant has not stated good reasons. He the application is superfluous before this court for lack of merit.

I have considerably perused the application supported by an affidavit. I have also keenly considered the submissions made by both parties to find out whether this application has merit or not. My findings will be based on determining the issue as to whether the applicant has advanced sufficient reasons for this court to consider his application for an extension of time to file an appeal out of time.

In my considered view the main issue in this matter is whether the applicants have properly moved this court in their application and whither there are any good causes for their delay or not. I am aware that where any party seeks for an extension of time to file an appeal out of time he is required to

advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law with and case studies. In this regard, I wish to refer the decision of the Court of Appeal of Tanzania in **REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)**. The court in this case observed that;

“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.

This means that in determining an application for extension of time, the court has to determine if the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. This means that the court need to consider an issue as to whether the applicants in their affidavit have disclosed good cause or sufficient reasons for delay. In other words, the court need to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to shown such reasons were operated for all the period of delay.

Reference can also be made to the decision of the court in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 Court of

Appeal of Tanzania at Dar es Salaam (Unreported) underscored that;

“Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

- (a) The length of the delay*
- (b) The reason of the delay – whether the delay was caused or contributed by the dilatory conduct of the applicant?*
- (c) Whether case such as whether there is a point of law or the illegality or otherwise of the decision sought to be challenged.”*

Worth also at this juncture referring the decision of the court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015** (Unreported) where it was held that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause...”

Looking at the application before this court, the applicant's in their affidavit have clearly indicated that they had sufficient reasons for their delay. It is clear from the affidavit and other records that the applicant have clearly stated the sufficient reasons for his delay. My perusal from the records also show that the applicant had once filed similar application in time but he withdraw with leave to re-file due to defectiveness in his document. It also on the records that the applicant was not

supplied with the ruling timeously. This means that the applicant had to correct his document something which has been done in time. In my view, these were good causes and sufficient reasons for his delay. My perusal on the applicant's documents including their affidavit in line with their submission has found that the applicant has indicated reasonable or sufficient cause to enable this court to consider and grant their application. Indeed, the question as to what it amounts to "sufficient cause" was underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007**, where the court observed the following:-

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**"(emphasis supplied).*

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant".

Reference can also be made to the decision of Court of Appeal in **MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998** in which the court at **Page 425** held that

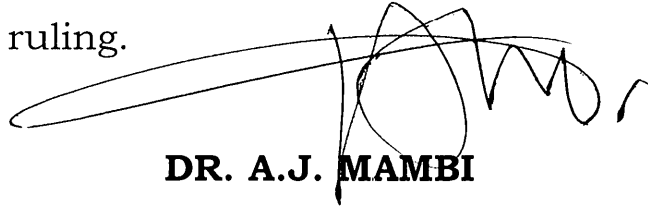
“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents’ delay does not constitute a case of procedural abuse or contemptuous default and because the applicant” will not suffer any prejudice, an extension should be granted.

I am not in agreement with the respondent that the applicants have failed to show sufficient reasons for their delay. I agree with the applicant that the applicant has advanced and presented sufficient reasons for delay and the extent of such delay in their application and he have also indicated that there a point to of law involved. I also wish to refer the Law of Limitation Act. The relevant provision is section 14 (1) of the Law of Limitation Act Cap.89 [R.E. 2002] which provides as follows:-

*“14-(1) Notwithstanding the provisions 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 such execution of a decree, and **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 mine)".

I am of the considered view that this application has merit and this court finds proper the applicants to be granted an extension of time to appeal to file leave to appeal out of time. The applicant shall file his application within 14 days from the date of this ruling.

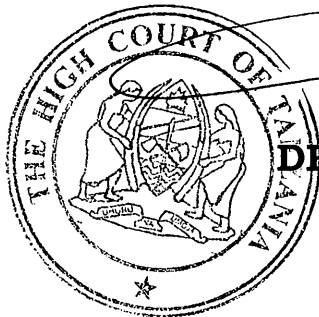


DR. A.J. MAMBI

JUDGE

30.7.2020

Ruling delivered in Chambers this 30th day of July 2020 in presence of both parties.



DR. A. J. MAMBI

JUDGE

30.7.2020

Right of appeal explained.



DR. A. J. MAMBI

JUDGE

30.7.2020