

THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC APPLICATION No. 640 OF 2017

(Originating from Ilala District Court, Civil Appeal No 76 of 2013)

MWANAISHA MOHAMED.....PLAINTIFF

Versus

SAMBUO H. JENGO AND ANOTHER.....DEFFENDANTS

RULING

22.10.2019 - 21.02.2020

J. A. DE-MELLO J;

Under **section 14 (1)** of the **Law of Limitation Cap. 89 R.E 2002**, the Applicant has moved the Court by way of Chamber Summons, for extending time to file an Appeal. The Application is supported by the affirmed Affidavit of **Mwanaisha Mohamed**, on reasons that:

“The Applicant has been facing financial constraints hence unable to retain an advocate”

Both the Applicant and the **1st Respondent** appeared in person whereas the **2nd Respondent** absented herself. The Application was argued by way of written submissions pursuant to the order of this Court as both are in

compliance. Submitting in support of the said Application and cognizant of the discretion bestowed upon the Court under the cited law above, having been satisfied following advancing reasonable or sufficient cause. She cited several cases in which the leave was granted namely; **Tanzania Revenue Authority vs. Tango transport company Ltd. Civil application No. 5 of 2006**, and **Mary Mchome Mbwambo and Another (as Joint Administrator of the Estate of the late Gilliad Mbwambo) vs. Mbeya Cement Co. Ltd (2017) TLR 227**. She on a higher note pleads with the Court to take into account the reason for her delay struggling to secure a lawyer, being a pauper herself. She is certain the cause to fit the principles as she draws the Court to the case of **Ehangir Aziz Abdulrasul vs Balozi Ibrahim Abubakar and Bibi Sosophia Ibrahim, civil Application No. 76 Of 2016**. Further, she narrates to have sourced legal assistance from a certain advocate in **Civil Appeal No. 30 of 2016** who later withdrew for want of instructions something which derailed her as the matter was **Struck Out**. It is later that Tawla came to her rescue and here now. She grounded her argument based on **Article 13 (6) (a)** of the Constitution which provides for the equality before the law and the case of **Regional Manager, Tanroads Kagera vs Ruaha Concrete Company Ltd Civil Application No. 96 of 2007 CA**.

Opposing, the 1st Respondent reiterated the need for sufficient reasons, advanced by the Applicant but with Courts discretion. He further discounted the reasons given that of absconding advocate but forgetting the need to account for the five years. She made reference on the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of**

Young Women Christian Association of Tanzania where the Court highlighted guidelines for grant of extension of time. She further explained that failure to prosecute her Appeal at High Court without registering her problems, was disdain, and, yet she did the same in the second Appeal. She backed up her argument by citing the case of **Michael Lesani Kweka vs John Eliafye [1997] TLR 152** and **Republic vs. Yona Kaponda & 9 Others [1985] TLR 84**. Further that, the Applicant delay is nothing other than negligence for failing to state clearly and precisely, the date and or number of days which she spent in retrieving documents, turning the Court into a Political forum which is highly improper and acceptable. What the Applicant is doing is, seeking the Court's sympathy out of her own negligence, quite inappropriate as it was observed in the case of **John Cornel vs A. Grevo (T) Ltd. Civil Case No. 70 of 1998**. She concluded by praying for dismissal of the Application lest the Respondent suffers irreparable loss.

It is withdrawal of the Advocate not without handing over documents back to the Applicant that the Applicant adduces as sufficient reason. It is critical and fully in agreement with the Respondent that, the **five (5)** years delay raises eyebrows and demands proper substantiation for this unexplained delay. Records from file reveals the decision intended to be Appealed against was delivered on the **24. 11. 2014** as this application was filed in **2017**. Despite the explanation that the Applicant had no legal assistance, nothing credible is shown to exhibit efforts and struggles experienced let alone accounting for the period of delays. Yes, good and sufficient reason but, accounting for every day of delay can not be understated as the Court

has emphasized in some numerous decisions, examples of which are the cases of **Bushiri Hassan vs. Latifa Lukio, Mashayo, Civil Application No. 3 of 2007 (Unreported)** and, **Karibu Textile Mills vs. Commissioner General (TRA), Civil Application No. 192/20 of 2016 (unreported)**. In the **Bushiri Hassan case (supra)**, the Court stated:

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

I am even not convinced that, the withdrawal by the Advocate contributed towards delay considering the passiveness, inactive or acted negligently to overcome her predicament. In the case of **DP. Valambhya vs. Transport Equipment Ltd, Civil Appeal No. 13 of 1991** the Court made clear that;

"Where counsel's conduct amount to negligence or inaction leading to noncompliance with mandatory statutory requirement, this court will not be easily moved to condone the conduct".

It is my conviction that the law under **section 14 of Cap. 89** intends to bring justice where a Party has been caught in a situation completely out of control which jeopardizes his/her rights. This is the position held and we are bound to follow in the case of **Nemco Ltd. vs. Milo Construction Company Ltd., Civil Revision No. 29 of 1997** that;

"Now the principle behind section 14 of the law of limitation Act No. 10.1971 is that, its application should advance substantial justice when negligence, nor laxity, nor laches, nor indolence, nor

want of bona fides, is imputed on the applicant". I also subscribe to the views expressed by the Court in the case of **Mrs. Mwanahamisi Kiangi vs. Mrs. Coretha Kapingu, Civil Appeal No. 2 of 1994**, and, **Allison Sila vs THA, civil reference No. 14 of 1998**. In **Mrs. Mwanahamisi Kiangi vs. Mrs. Coretha Kapingu**, the Court of Appeal stated;

"Delay of one day is fatal especially where no sufficient reason for the delay is given"

Applying the above analysis, the **three (3)** delayed, the absconding Advocate notwithstanding, I have not been persuaded by what is before the Court, as sufficient reason (cause) for the delay. In the event, I must conclude that, under the circumstances, the Applicants has failed to illustrate good cause that would entitle her of the prayers sought that of extension of time.

I consequently dismissed the application with no costs, considering the status of the Applicant being a lay person.

Ordered accordingly.


J. A. DE-MELLO

JUDGE

21.02.2020