

**IN THE HIGH COURT OF TANZANIA**

**AT SUMBAWANGA**

**MISC. CIVIL APPLICATION NO. 3 OF 2020**

(Original from Chala Primary Court Civil Case No. 1/ 2018 – District Court of Nkasi Civil Appeal No. 2/ 2018 and PC Civil Appeal No. 4 of 2019 at High Court of Tanzania at Sumbawanga)

**SERIKALI YA KIJIKI CHA KATANI.....APPLICANT**

**VERSUS**

**PAULO NTEMI.....RESPONDENT**

**RULING**

23<sup>rd</sup> June – 4<sup>th</sup> August 2020

**MRANGO, J**

This application was made under **Rule 19 Order XXXIX of the Civil Procedure Code, Cap 33 RE 2002**, and **section 14 (9) and section 9 of part III of Schedule of Law of Limitation Act Cap 89 RE 2002**. The applicant is seeking the enlargement of time in order to file application for re-admission of an appeal dismissed on 06/ 08/ 2019 before Hon. Mrango, J. The application is supported by an affidavit sworn by Mr. Jofrey Kisato.

At the Chala Primary Court (henceforth the trial court), the respondent sued the applicant over claim of building costs worth Tsh. 2, 261,000/= . The trial court determined the matter in favour of the

respondent herein. Dissatisfied the applicant preferred an appeal at the District Court of Nkasi (henceforth the appellate court) where the appellate court maintained the decision of the trial court. Aggrieved by such decision the applicant lodged an appeal at this court challenging the decision of the District Court. This court dismissed the appeal for non-appearance of parties and for want of prosecution on 06. 08. 2019.

Thus, the applicant has lodged this application before this court so as to be granted extension of time for an appeal to be re-admitted.

When the application was called on for hearing the applicant was represented by Mr. Bwigane Mwasipu, learned solicitor while the respondent appeared in person, unrepresented. Mr. Mwasipu prayed to argue the application by way of written submission whereas the respondent conceded. Each party filed respective submissions as scheduled and ordered by the court.

In supporting the application, Mr. Bwigane Mwasipu, learned solicitor submitted that previously there was a matter before Chala Primary Court Civil Case No. 1/2018 between the applicant and the respondent whereby the matter was decided in favour of the respondent. Aggrieved by such

decision the applicant filed Civil Appeal No. 2 of 2018 where the applicant lost the case. Still aggrieved the applicant filed second appeal to this court PC. Civil Appeal No. 4 of 2019.

Mr. Mwasipu further submitted that pursuant to section 25 (3) (4) of the Magistrate Court Act, Cap 11 RE 2002, the applicant filed the said appeal before the District Court of Nkasi. The applicant made several follow up so as to be assured for the registration of the appeal before this court. He said the applicant's effort earned fruitless up to the date when served with an order of dismissal his appeal for non-appearance of parties and for want of prosecution.

Mr. Mwasipu submitted that **section 26 (a) of the Magistrate Court Act, Cap 11 RE 2002** provides that;

"Where an appeal against any decision or order of a district court in the exercise of its appellate or revisional jurisdiction is received in the High Court, a registrar of that court may

- (a) Give directions as to the time within which any further step in the proceedings shall be taken by the appellant or any

other party (and may extend any such period) and where the appellant fails to complete any such step within such time, may dismiss the appeal for want of prosecution”

Mr. Mwasipu submitted further that it is a duty of the registrar of the High Court to give directions as to the time within which further step in the proceedings shall be taken by the appellant. That dismissal for want of prosecution comes after the appellant failed to complete steps as directed by the registrar of the High Court.

Learned solicitor submitted that under **Rule 19 Order XXXIX of the Civil Procedure Code, Cap 33 RE 2002** the appellant has a room to make an application for re-admission of the dismissed appeal. Since the order delivered by the court on 06 day of August 2019 and the applicant received it on 16 day of March 2020, he found himself out of statutory time to file an application for re-admission. That the applicant is believing to have sufficient ground to address this court so as to allow him to file the said application out of statutory time.

Mr. Mwasipu finally submitted that based on the argument herein above the applicant prayed for this court to grant extension of time for the

applicant to file application for re-admission of the appeal dismissed on 06 day of August 2019.

In reply, the respondent before responded to the submission as submitted by the applicant wished to narrate briefly the history of the matter. He said the respondent filed a suit at the Chala Primary Court against the applicant whereby the decision of the court was in favour of the respondent. The applicant herein was aggrieved and filed an appeal at the District Court of Nkasi at Namanyere in Civil Appeal No. 2/ 2018 and again the decision was delivered in favour of the respondent. The applicant was again aggrieved with the said decision and filed an appeal No. 4/ 2019 at this court. In the process the applicant went to the Nkasi District Executive Director to seek an advice on the matter upon which the District Executive Director advised the applicant not to continue with the matter and pay the respondent the sum decided by the court. The advice made the applicant to refrain from continuing with the appeal before this court which renders the applicant even not to make follow up of his case as a result the same was dismissed for want of prosecution.

The respondent further submitted that paragraphs 1,2,3 and 4 of the applicant's submission are mere facts of which he will not labor to reply the same. In reply to the 5<sup>th</sup> paragraph the respondent submitted that the applicant is telling a day light lies because upon being directed by the District Executive Director to pay the respondent that is when the applicant decided to abandon the case. Therefore the act of the respondent to abandon the case was not by mistake because it was deliberately planned as they were about to pay him the sum decided by the court. He was making follow up at the Nkasi District Court so that he can execute the matter where he was informed that there was an appeal and he came to this court and found the said appeal has been dismissed for want of prosecution. The applicant decided to file this application upon being notified that he was in the process of applying for execution. Therefore he was of the view that this application is an afterthought by the applicant and he is just intending to delay the justice to the respondent without any justifiable reasons.

The respondent submitted further that paragraphs 6, 7, 8, 9, 10 and 11 essentially the applicant is praying mercy of this court to allow him or to extend time for him to file an application to set aside the dismissal order.

He wished to submit that the applicant does not deserve any mercy of this court to extend time within which to file an application to set aside a dismissal order because the delay was deliberately planned as he submitted in the preceded paragraph that the applicant decided to abandon the case following the advice by the Nkasi District Director via a letter dated 31 .08. 2018 annexed in the respondent affidavit which advised the applicant to pay the respondent and directed the applicant to end the matter.

Finally, he submitted that the ground of application is baseless, need not be considered at all and ought to be dismissed with costs.

Having considered the submissions and the arguments of both sides, the question before this court is whether the applicant has successfully advanced sufficient reasons for this court to grant extension of time to re-admit the appeal.

It is a cardinal principle of law that when the time has expired, there must be explanation or material upon which the court may exercise its discretion to extend it. See decisions in the case of **Regional Manager Tanroads Kagera versus Rinaha Concrete Co. Ltd; Civil Application**

**No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200 and Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

In the instant application, the applicant through his averments in paragraphs 6 and 7 of the affidavit has advanced the reasons for the non-appearance before this court in PC. Civil Appeal No. 4 of 2019 being that, neither appellant nor respondent was served with the summons to attend the court on the date scheduled for the hearing.

On his part, the respondent strongly opposed the application as he said the applicant deliberately choose not to prosecute his case following the advice by the Nkasi District Council Director that they have to pay him the sum as decided by the court as a result the applicant abandoned the case.

In addition, the respondent argued that the applicant had a duty bound to make follow up to the court so as he could have given summons for his case and not to shift the burden to the court. He said upon going to the District Court for execution he was informed that the applicant preferred an appeal and he came to this court to find the appeal dismissed

for want of prosecution. Thus the applicant cannot benefit from his own wrong.

With that view, I find that the applicant has not been able to advance sufficient reasons for this court to grant extension of time to re-admit the appeal which was dismissed by this court for non-appearance of parties and for the want of prosecution.

In the premises, this application is dismissed in its entirety with costs.

It is so ordered.



  
**D. E. MRANGO**

**JUDGE**

**04. 08. 2020**

Date - 04.08.2020  
Coram - Hon. D.E. Mrango – J.  
Applicant - Mr. Geoffrey William Kisato – Mwenyekiti  
and James Gervas - Mjumbe  
Respondent - Present in person  
B/C - Mr. A.K. Sichilima – SRMA

**COURT:** Ruling delivered today the 04<sup>th</sup> day of August, 2020  
in presence of both the parties in persons.

Right of appeal explained.



  
**D.E. MRANGO**

**JUDGE**

**04.08.2020**