

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

**MISC. CIVIL APPLICATION NO. 48 OF 2019**

(C/F Civil Appeal No. 22 of 2017 in the High Court of the United Republic of  
Tanzania at Arusha, Original, Civil Case No. 21 of 2016 in the Resident  
Magistrate's Court of Arusha at Arusha )

**CATHERINE LOSIOKI TELELE.....APPLICANT  
VERSUS**

**NGORONGORO PASTORAL COUNCIL.....1<sup>ST</sup> RESPONDENT**

**ENDULEN WARD COUNCILLOR.....2<sup>ND</sup> RESPONDENT**

**NDANIN NGIMA MANI.....3<sup>RD</sup> RESPONDENT**

**RULING**

**15/07/2020 & 25/08/2020**

**GWAE, J**

Before me, is an application for enlargement of time preferred under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E 2002]. The applicant herein is seeking the lenience of this court to extend time so that she may file an application for leave to appeal to the Court of Appeal of Tanzania out of time in respect of the judgment of this court (**Maige, J**) in Civil Appeal No. 22 of 2017 delivered on the 29<sup>th</sup> March, 2019.

The application is supported by the sworn affidavit of the applicant and the same is founded on the following facts; that the applicant was dissatisfied by the judgment delivered by the High Court, she therefore intends to appeal against such decision, however due to sickness (gout)

she failed to meet her lawyers styled M/S BILL & WILLIAMS ADVOCATES on time to give them proper instructions. It was until 8<sup>th</sup> May 2019 when she was able to travel to Arusha to meet her lawyers and gave them instructions to file this application.

The applicant further averred that, her lawyers had already written a letter (dated 29<sup>th</sup> March 2019) requesting for certified copies of judgment, proceedings and decree, they had also filed a notice of Appeal on the 29<sup>th</sup> April 2019, all these were to show that the applicant was intending to appeal against the decision of the High Court which according to her is tainted with illegalities and irregularities. He attached copies of the medical checkup papers and receipts from Aga Khan Health Center Arusha.

The respondents strongly contested this application via a counter affidavit sworn by Mr. Ipanga Kimaay, the respondent's counsel whose essence is that, the applicant's illness does not account for the delay and if the applicant's advocate was able to file notice of appeal he could also file an application for leave to appeal to the Court of Appeal. The respondents also stated that, the memorandum of appeal annexed does not sufficiently indicate illegality.

The application was disposed by way of written submissions and the parties were represented by the learned counsels **Mr. William Ernest** (adv) assisted by **Mr. George Mnzava** (adv) for the applicant and **Mr. Ipanga Kimaay** (adv) for the respondents

Supporting her application, the applicant basically reiterated what she had stated in her affidavit that, the reason for the delay is on the illness of

the applicant together with the issue of illegality and irregularity on the decision intended to be appealed.

In response, the respondents' submission is also grounded on what had been stated in the counter affidavit.

In rejoinder, the applicant maintained that the reason for the delay was due to her sickness and that she has accounted for all the days of delay. The applicant's counsel also submitted that they were able to request for certified copies of judgment, decree and proceedings as it was part and parcel of the instructions in the Civil Appeal No. 22 of 2017. On the issue of filing the notice of appeal, the counsel argued that since the notice of appeal is dated and signed by the advocate, therefore the applicant's advocate filing the notice of Appeal does not stand to mean new instructions.

This is an application for extension of time, and just like any other application of this nature whose the guiding principle is "whether the applicant has established sufficient reasons" to enable this court to exercise its discretion to grant the sought extension of time. It is a common ground that there are no hard or fast rules in determining applications for extension of time, it all depends on what the applicant demonstrate before the court to the satisfaction that sufficient cause has been well established. In other words, each case is to be looked at and considered on its own sets of facts, merit and circumstances before arriving at a decision whether or not sufficient cause has been shown. See: **William Malaba Butabutemi vs. Republic**, Criminal Appl. No. 5 of 2005 referred with approval in the

case of **Citibank (Tanzania) Ltd vs. TTCL, TRA & others** Civil Application No. 6 of 2003.

With the foregoing factors in mind, I now turn to consider the two reasons advanced by the applicant in her affidavit whether they constitute sufficient cause. It has been argued by the applicant that she has been suffering from gout and cholesterol for a number of years and the intensity of sickness varies from time to time. Due to the sickness the applicant could not even attend in court on the date when the judgment was delivered.

The applicant persistently contended in her affidavit that she was desirous to appeal against the decision however she fell sick and could not meet her lawyers on time to give them instructions to pursue the intended appeal. At the same time the applicant through paragraph 6 and 8 of her sworn affidavit stated that her advocates through the firm of M/S BILL & WILLIAMS ADVOCATES filed a letter requesting for copies of judgment, proceedings and decree. And on the 29<sup>th</sup> April 2019 her lawyers again filed notice of appeal to show her intention to appeal.

I am also of the same view that if the applicant's advocates were able to file the notice of appeal which in real sense initiates the appeal proceedings could also proceed with other appeal processes including filing an application for leave however the applicant's advocates might have probably waited for their client to fully be instructed to either proceed with further appealing processes or abstain from appealing taking into account that any stage involves costs implications and time consuming.

Going by the records of this matter I have further noted that the parties have been represented by the same advocates appearing in this application, it is undoubtedly that, the parties must have been in good communication with their advocate ever since the matter was taken to the Resident Magistrate Court for the first instance. I am not resisting the fact that, the applicant might have been serious sick which is a good and sufficient cause for enlarging of time (See **Kijiji Cha Ujamaa Manolo v. Hote** [1990–1994] 1 EA 240)

As already stated in the **Laymuya's case**, in applications for extension of time the applicant must account for each day of delay. The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions, examples are such cases of **Bushiri Hassan v. Latifa Lukio, Mashayo**, Civil Application No. 3 of 2007 (unreported) and **Karibu Textile Mills v. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016 (unreported). In the **Bushiri Hassan case**, 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."

The present application seems to have been filed on 09/05/2019 whereas the judgment intended to be appeal was delivered on 29/03/2019 and according to Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 as amended by Rule 6 of the G.N No 365 of 2017 the time limit for filing applications for leave to appeal to the Court of Appeal is thirty (30) days, consequently, the applicant had delayed for about 10 days. In the affidavit

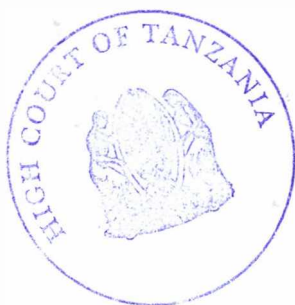
sought extension of time, to pave way for the alleged illegality to be deliberated by the court.”

It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time is well settled and it should be borne in mind that, in those cases where extension of time was granted upon being satisfied that there was illegality, the illegalities were explained. (See **Finca (T) Limited and another vs. Boniface Mwalukisa**, Civil Appl. No. 589/12 of 2018 CAT at Iringa, (Unreported).

I have gone through what is before this court, conversely, I am persuaded on the alleged illegality in this court’s decision, in my view but without pre-empting a decision on the intended application for leave, at least there is a legal issue to be addressed by the Court of Appeal.

In the event, it is my finding that the applicant has disclosed good cause for the court to exercise its powers to enlarge time. Accordingly, this application is granted, the applicant is given **ten (10) days** within which to file his application for leave to appeal to the Court of Appeal of Tanzania. No order as to costs of this application is made.

It so ordered.



  
**M.R.GWAE**  
**JUDGE**  
**25/08/2020**