

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

MISCELLANEOUS CIVIL APPLICATION NO. 41 OF 2018

*(Arising from Civii case appeal No. 06/2016 (HC) Originating from civil case No.
18 of 2011 at the Resident Magistrates Court of Bukoba)*

VICENT FRANCIS ----- APPELLANT

VERSUS

RODRICK MAIMBALI ----- RESPONDENT

RULING

Date of last order 17/02/2020

Date of Judgment 21/02/2020

N.N. Kilekamajenga, J.

The appellant, in this application, moved this Court by way of chamber application for the following orders:

- 1. That, your honourable (sic) Court be pleaded to order the extension of time to file the appeal out of time.*
- 2. Cost of this application.*
- 3. Any other relief(s) this Honourable Court may deem fit to meet the needs of justice.*

The application was made under **Section 93 of the Civil Procedure Code, Cap. 33 RE 2002** and **Section 14 (1) of the Law of Limitation Act, Cap.**

89 RE 2002. The application was also accompanied by an affidavit sworn by the applicant.

The matter was finally called for hearing. Both parties were absent, but their legal representatives appeared on their behalf. The learned advocate, Mr. Bengesi appeared for the applicant while the learned advocate, Mr. Mwita Makabe appeared for the respondent. In his oral submission, the counsel for the applicant submitted that the applicant appealed before this Court on time but his appeal was struck out after the court upheld points of preliminary objection which were raised by the respondent. Therefore, the initial appeal was struck out on 16th July, 2018.

The applicant applied for a correct decree from the trial court which was issued on 19/10/2018. According to Mr. Bengesi, the period between the day when the the correct decree was issued, this was an 'excusable technical delay'. The applicant lodged this application on 12th December 2018. Again, according to Mr. Bengesi, the time between the dates when the decree was issued to the time when the applicant lodged the appeal, this was a 'real delayed.' He cited the case of **Fortunatus Masha v. William Shija and Another [1997] TLR 154** which is cited with approved in the case of **Ramadhani J. Kihwani v. Tazara Civil Application No. 401 of 2018.**

He further submitted that under paragraph 5 of the affidavit, there is a legal point which must be determined on appeal. He urged the Court to grant an order for extension of time so that the appeal may be determined on merit because the applicant has a lot to lose than the respondent when the application is denied.

In response, the counsel for the respondent submitted that the initial appeal was struck out because it was filed in a wrong registry. When the initial was struck out, the applicant delayed for almost 120 days to file the instant appeal. From the day when the initial appeal was struck out to the date when he applied for the correct decree, there is a delay of about 66 days. These days have not been accounted for. When the correct decree was issued on 19th October 2018, again he delayed for 54 days before filing the instant application. He further submitted that the 5th paragraph of the affidavit does not state or show any legal point of law to be determined by the Court. The extension of time is normally granted where there is an illegality or where the applicant shows sufficient cause for the delay. Mr. Makabe finally supplied the Court with authorities on the need to account for the delay. He cited the case of **Finji Nyumayo v. Silaji Sadick Omary, Civil application No. 26 of 2016**; and **Zawadi Msemakweli v. NMB PLC, Civil Application No. 221/18 of 2018**. He urged the Court to dismiss the application with costs.

When rejoining, the counsel for the applicant reiterated the points submitted in the submission in chief and urged the Court to allow the application with costs.

Now, upon going through the submission and other information available in the Court file. Also, considering the position of the law on application for extension of time, the applicant is obliged to show sufficient cause on why he delayed to file the appeal after the initial appeal was dismissed on technical grounds. The law is very clear – on this point of law. The applicant cannot only allege that he delayed to file the appeal without showing the cause for the delay. Doing so would render the Court not to exercise its discretion of granting extension of time as provided under **Section 93 of the civil Procedure Code, Cap. 33 RE 2002.**

Both in the applicant's affidavit and oral submission, it is clear that the appellant filed a civil case in the Resident Magistrates' Court of Bukoba and judgment was delivered on 10th February, 2016. Being dissatisfied with the decision of the trial Court, he appealed to this Court on 11th March, 2016. The appeal was struck out on 06th July, 2018 on the ground that the appeal was filed in a wrong or non – existing court registry. On 11th September 2018, the applicant applied for a correct decree from the Resident Magistrates' Court of Bukoba. When applying for the correct decree, he alleged that the appeal was dismissed as the decree was defective. This allegation was not true.

Finally, the applicant filed the application on 12th December, 2018. As rightly argued by the counsel for the respondent, from the day when the initial appeal was dismissed to the day when he filed the instant application, there are about five months of delay. The law requires the applicant to account for every day of delay. See the case of **Bushiri Hassan v. Latifa Lukio Mashayo, civil Application No. 3 of 2007** where the Court stated that:

"Delay, 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".

In his submission, the counsel for the applicant argued that the time when the appeal was struck out on 06th July 2018, until when the correct decree was issued, there was a technical delay. I do not subscribe to this view because this Court has already stated that there was no problem with the decree. Again, as argued by the counsel for the respondent, the applicant took more than two months to apply for the correct decree. Even after receiving the decree, the applicant took more than two months to file the instant application. I wish to reiterate the principle of law on application for extension of time. The principle is well stated in a number of cases including the case of **Tanga Cement Co. v. Jumanne Masangwa and another, Civil Appeal No. 6 of 2001** (unreported) where the Court of appeal of Tanzania stated that:

*"This unfettered discretion of the Court, however, has to be exercised judiciously, and the overriding consideration is that there must be **"sufficient cause"** for doing so. What amounts to sufficient cause has not been defined from decided cases a number of factors have been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."*

In the instant application the applicant, both in the affidavit and oral submission, has failed to show sufficient cause for the delay. At some point, on paragraph 5 of the affidavit, the applicant alleged that there was a 'legal point' to be determined by the Court when the appeal is heard. However, he failed to disclose the nature of that 'legal point' than stating that the respondent breached the agreement reached at the Regional Commissioner's office.

In my view, this alleged 'legal point' does not move this Court to exercise its discretionary powers to enlarge time to file an appeal out of time. The application is therefore devoid of merit and it should be dismissed. I hereby dismiss the application with costs. Order accordingly.

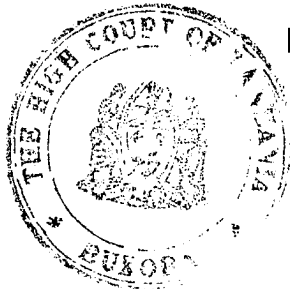
Dated at Bukoba this 21st February, 2020.


N. N. Kilekamajenga
JUDGE

21/02/2020

Court:

Ruling delivered in the Court's chamber in the presence of the counsel for the respondent and in the absence of the applicant and the respondent. Right of appeal explained to the parties.




N. N. Kilekamajenga

JUDGE

21/02/2020