

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

CRIMINAL APPLICATION NO. 34 OF 2019

(Arising from Criminal Appeal No. 36 of 2019, in the District Court of Mbozi, at Vwawa, originating in Criminal Case No. 105 of 2019, in the Primary Court of Mbozi District, at Mwambani).

**JOHNSON MWAKABENGA.....APPLICANT
VERSUS
GEORGE NICOLAUS MIHAYO.....RESPONDENT**

RULING

28. 07 & 24. 08. 2020.

UTAMWA, J.

This is an application for extension of time to file an appeal out of time. It is made under section 25 (1) (a) of the Magistrates Courts Act, Cap. 11 R. E. 2019 and filed before this court on 20th August, 2019. It is supported by an affidavit of the applicant, JOHNSON MWAKABENGA himself. The application proceeded without the respondent, GEORGE NICOLAUS MIHAYO following the fact that, he neither filed a counter affidavit objecting the application nor appeared in court despite due notice upon him.

The applicant in this matter, was aggrieved by a judgment (impugned judgment) of the District Court of Mbozi District, at Vwawa (the District Court) in Criminal Appeal No. 36 of 2019. The matter originated in Criminal Case No. 105 of 2019, in the Primary Court of Mbozi District, at

Mwambani (the primary court). He intended to appeal to this court, but he was late, hence this application.

According to the affidavit supporting the application, the applicant could not appeal timely within 30 days from the date of the impugned judgment as prescribed by the law. The major reasons for the delay are that, after the pronouncement of the impugned judgment on the 17th of May, 2019, his dependant, one Nicolaus Mwakabenga fall sick on 27th June, 2019. He thus, engaged on attending him. He was discharged from hospital on 11th July, 2019. He also faced financial constraints, he could not thus, engage an advocate following the treatments of his dependant.

In his written submissions, Mr. Osiah Adam Ambakisye, learned counsel for the applicant reiterated the contents of the affidavit and argued that, the applicant had adduced good cause. For this reason, his application should be granted. He cited the cases of **Yusuph Abdallah Mwatile v. Sophis Rashid Maponi, Misc. Application No. 16 of 2018, High Court of Tanzania (CAT), at Iringa** (unreported) and **Felix Tumbo Kisima v. TTCL LTD and another, Civil Application No. 10 of 1997, Court of Appeal of Tanzania** (unreported) to support his contention that, good reasons entitle the application to the extension of time.

I have considered the record, the arguments by the applicant and the law. In my view, the only fact that the respondent opted to the passive reaction as hinted earlier is not a good reason for granting this application. The law is trite that, for the court to grant an application for extension of time, the applicant must adduce sufficient reason or good cause; see the

decision by the Court of Appeal of Tanzania (CAT) in the case of **Mumello v. Bank of Tanzania [2006] 1 EA 227** and many others. The issue before me is thus, whether or not the applicant has adduced good cause for extending the prayed time.

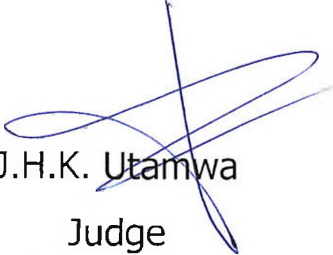
In my view, the circumstances of this case do not attract answering the issue posed above affirmatively. This view follows the following reasons; in the first place, I do not think that being broke to the extent of being unable to engage an advocate is a good reason for delaying to take any legal action. In my view, though the right to legal representation is constitutional, the law does not guide that, failure to engage an advocate for financial constraints halts time limitation from running against the broke party. If courts take this as a good cause, injustice will prevail since dishonest parties to court proceedings will slip on their rights, wake up late and hide themselves under the umbrella of being broke. Besides, the law does not compel parties to engage advocates so that they can get justice in courts. I thus, find that, the reason that the applicant could not engage an advocate timely for being broke is not a good cause for purposes of granting the prayed extension of time.

Again, the law provides that, an applicant for extension of time must account for each date of delay before the application is granted: see the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Application No. 138 of 2016, CAT at Dar es Salaam** (unreported) which followed **Bushfire Hassan v. Latina Lucia Msanya, Civil Application No. 3 of 2001** (unreported). However, the applicant in the matter at hand, did not comply with this particular principle of the law. He

did not for example, tell the court as to when he became liquid for engaging the advocate. He thus, concealed one of the material facts for this court to determine whether he had good cause for the delay.

Furthermore, the laws guides that, a party seeking for extension of time must be prompt. Promptness shows that he is diligent and serious in pursuing his right, hence a good cause. However, in the matter at hand, it is in record that the impugned judgment was delivered on 17th May, 2019. The applicant deponed that, he received the copy of judgment on 14th June, 2019. If one computes the 30 days for appealing from the date the applicant received the copy of judgment, it is vivid, by simple arithmetic that, he was supposed to file his appeal by 14th July, 2019. Nonetheless, despite his delay to appeal, the applicant did not file this application at hand promptly. He waited until on 20th August, 2019. As I observed before, there was no good reason for him to wait for such long time. It cannot thus, be said that, he was punctual enough in pursuing his rights.

Having observed as above, I hereby answer the issue posed above negatively to the effect that, the applicant has not adduced any good cause for extending the prayed time. I consequently dismiss the application. It is so ordered.


J.H.K. Utamwa
Judge
24/08/2020

24/08/2020.

CORAM; Hon. JHK. Utamwa, J.

Appellant; present and Mr. Osia, advocate.

Respondent; absent.

BC; Mr. Kibona, RMA.

Court: Order pronounced in the presence of the applicant and Mr. Osiah, Adam Ambakisye, advocate for the applicant, in court, this 24th August, 2020.




JHK. UTAMWA.
JUDGE
24/08/2020.