

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

MISC CIVIL APPLICATION NO. 24 OF 2018

*(Arising from Civil Appeal No. 9 of 2017 Mbozi District Court
Originating from Civil Case No. 71 of 2017 Luanda Primary Court)*

NOTKER MGINA.....APPLICANT

VERSUS

MURINGA CO. LTD. (BARAKA JULIUS).....RESPONDENT

R U L I N G

Date of last order: 22/06/2020

Date of Ruling: 25/08/2020

NDUNGURU, J.

This is a ruling in respect of an application for leave to enable the applicant to file his appeal out of time against the decisions of the District Court at Mbozi and the original case which was tried at Luanda Primary Court. The application has been made under Section 25 (1) (b) of the Magistrates Court Act Cap 11, R.E 2002, Rule 3 of the Civil Procedure Appeals in Proceedings Originating in Primary Courts) G.N No. 312 of 1964. The same is supported by an affidavit duly sworn by Notker Mgina; the applicant.

For a better appreciation of the prayers made in the present

application, I find it apt to preface my deliberations with a brief factual background that prompted the applicant to file the present application. It as follows. The Respondent won his suit against the Appellant at the first trial court where the court ordered the Appellant to pay Tshs. 10,600,000/= in Madai Na. 75/2017. Dissatisfied, the Appellant filed his appeal No 09 of 2017 at the District Court. His attempt to challenge the said decision at the District Court was not successful as the District Court Magistrate dismissed the appeal on 2nd day of October, 2017. Still undaunted, he lodged an Appeal to this Court as PC Civil Appeal No. 7 of 2019 but was rejected by Madam Ngwala, J for being filed contrary to Section 28 (3) of the Magistrates Court Act (supra). Again, the applicant filed this application in order to try his lucky at this Court after having realized that he was time barred.

In this application, the applicant appears unrepresented while Mr. Furaha Mwaijumba represented the Respondent. The application has been disposed of by way of written submissions. I must admit that when I was going through the applicant submissions, I did not find any material substance. I have resorted into his affidavit instead. Under paragraph three of his affidavit, the applicant deponed that he is a layman hence not conversant with the procedures of filing an appeal from Primary Court. The applicant is very confident that he has an

overwhelming chance of success as there is fundamental argument on point of law to be tackled by this court.

For his part, the respondent through Mr. Barnaba Pombona who prepared the submissions in gratis was very brief and focused. He went on straight to state that, the applicant has never adduced sufficient ground for his delay to file his appeal within time. He further stated that the applicant has not accounted for each day of his delay. He strongly resisted that the applicant's contention that he was negligent to follow proper procedure in his first appeal which was rejected by Ngwala J does not hold water with the reason that ignorance of law is not a defense. He referred to this Court the case of **Lyamuya Construction Ltd. vs. Registered Trustee of Young Women Christian Association**, Civil Application No. 2 of 2010 (unreported).

The learned counsel for the Respondent went on to state that the applicant has failed to account for each day of delay citing to me the case of **Mtesigwa Kugola vs. The Attorney General and Another**, Civil Application No. 34 of 2017 at Court of Appeal of Tanzania Mbeya (unreported).

In a short rejoinder, the applicant has nothing useful that I can consider. Having stated as above, the ball is now in court to confront the prayers raised by the applicant in his chamber application. I have

impassively taken into consideration the applicants' arguments as well as the respondents written submissions. From the foregoing, it cannot be doubted that this application is premised on the provisions of Section 25 (1) (b) of the Magistrates Court Act and Rule 3 of GN No. 312 of 1964. It is therefore important; I think to reproduce Section 25 (1) (b) hereunder:

25 (1) (b) Appeals, etc., from District Courts in their appellate and revisional jurisdiction
(1) Save as hereinafter provided—
(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

I have no doubt that the applicant has exercised his right by filing his appeal at the High Court but it was rejected by Ngwala J on 13th day of April, 2018 as it was not in compliance with Section 25 (3) of the Magistrate Act [Cap 11 R.E 2002]. This application was therefore filed on 5th day of October, 2018.

In view of the submissions of the parties and the relevant law, the issue I am supposed to determine in this application is whether there are sufficient reasons advanced to enable this court to exercise its

discretion in granting the application for leave to file an appeal out of time. The applicant main ground is pegged on the ground that he is a layman hence not conversant with filing appeals that originates from the Primary Court. This submission has been strongly resisted by the respondent with a view that ignorance of the law has no excuse.

It is my considered opinion that in order to appreciate the gist of this application, it is important to reproduce the relevant paragraphs of the applicant's affidavit in support of the application. These are paragraphs 3 and 6:

3. *That, I am a layman in the field of law, therefore I do not know the procedure of filling an appeal from Primary Court.*
6. *That my intended appeal to this Honorable Court has overwhelming chance of succeed there is fundamental argument on point of law to be tackled by this Honorable Court.*

I think it is important to state that the applicant in paragraph 3 and 6 of the affidavits is asserting that he is a layman hence not conversant with the procedure and he is sure that he has a great chance of success in his appeal. On the other hand, the remaining paragraphs which I have decided not to reproduce contains the history on how he filed his appeal at the District Court and what has happened at this Court that it was summarily rejected due to his failure to follow the

requisite procedure.

Ignorance of law has never been accepted as sufficient reason or good cause for extension of time. A delay of even a single day has to be accounted for. This court and the Court of Appeal have on diverse decisions pronounced factors to be taken into consideration when confronted with what amounts to sufficient cause. This are:

- (i) *Length of delay*
- (ii) *Reasons for delay*
- (iii) *The degree of prejudice to the other party; if granted*
- (iv) *The chances of success if the application is granted.*

The above stance has been taken in the case of **Tanga cement Company Ltd. vs. Jumanne D. Masangwa and Amos A Mwalavanda**, Civil Application No. 6 of 2001 and **Wambeke Ntumwa Shahame vs. Mohamed Hamis**, Civil Reference No. 8 of 2016, Court of Appeal of Tanzania at Dar es Salaam (both unreported). As it can be depicted, the applicant is duty bound to show or demonstrate a good cause. There are however, no hard and fast rules as to what constitutes good cause. An attempt has been illustrated in **Blacks Law Dictionary (9th Edition) by Bryan and Garner** where good cause has been defined to mean "*legal sufficient reason*". Therefore, good cause depends on the circumstances of each case.

As per the court records, PC Civil No. 7 of 2018 was decided by

Date: 25/08/2020

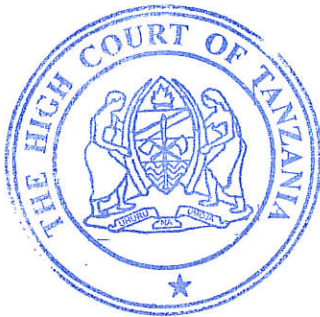
Coram: D. B. Ndunguru, J

Applicant: Present

Respondent: Present

B/C: M. Mihayo

Court: Ruling delivered today in the presence of the applicant and respondent who is represented by Furaha Mwaijumba.




D. B. NDUNGURU
JUDGE
25/08/2020

Right of Appeal explained.