

**IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)**

AT MBEYA

MISC. APPLICATION NO. 19 OF 2019

(Originated from the Award of the Commission for Mediation and Arbitration for Mbeya in Complaint No.CMA/MBY/68/2018)

BETWEEN

ENISA KABAGE1st APPLICANT
ROSEMARY MWAKINGILI2nd APPLICANT
THOMAS SIDORY3rd APPLICANT
JOYCE .J.KISIMBAZI4th APPLICANT
FLORA MFUNE5th APPLICANT
ROGZENA MINJA6th APPLICANT
CLARA J. NANYARO7th APPLICANT

AND

**PERMANENT SECRETARY MINISTRY OF HEALTH, COMMUNITY
DEVELOPMENT, GENDER, ELDERLY and
CHILDREN.....1st RESPONDENT**
**EXECUTIVE DIRECTOR MBEYA CONSULTANT
HOSPITAL.....2nd RESPONDENT**
ATTORNEY GENERAL3rd RESPONDENT

RULING

Date of Ruling: 18.11.2020

A. J. MAMBI, J.

This Ruling emanates from an application filled by the applicants
(ENISA KABAGE, ROSEMARY MWAKINGILI, THOMAS SIDORY,

JOYCE J. KISIMBAZI, FLORA MFUNE, ROGZENA MINJA & CLARA J. NANYARO) for an extension of time to file an appeal out of time. The applicants in his application (**MISC. APPLICATION NO. 19 of 2019**), has prayed to this court to allow her to file Bill of costs against the respondents. The application is supported by an affidavit where the applicant has stated his reasons for his delay.

During hearing the applicants appeared unrepresented while the first respondents were represented by the learned Solicitor.

In their affidavitat paragraph 12 the applicants have briefly stated that they managed to get copies but sum of the applicant were not available. They also stated under paragraph14 that the degree of lateness was not deliberate.

In reply to the applicant application, the respondents' Learned State Attorney submitted that applicants have not indicted any sufficient reasons in their affidavit. He argued that the applicant has failed to count each day on his delay. He averred that they have not seen any clear reasons stated at the applicants' affidavit.

I have considerably perused the documents and considered the submissions made by the applicant and respondent to find out whether this application has merit or not. My findings will be based on determining the issue as to whether the applicant has advanced sufficient reasons for this court to consider his

application for an extension of time to file application for bill of costs out of time.

I have dully perused the documents and considered the submissions made by both parties to find out whether this application has merit or not. Before determining the merit of the application, there is one main issues raised that need to be addressed namely: whether the applicants have advanced sufficient reasons for his delay. There is no doubt that the law avails discretionary power to court to enlarge time to file an application before or after expiry of the period of the limitation. However, for the court to use its discretion to enlarge time, the applicant must clearly indicate sufficient reasons in his/her affidavit including counting for each day of the delay. This means as it has also been decided in various cases by this court that, enlargement of time can only be granted where the applicant advances sufficient reasons for his or her delay.

I will now revert to the merits of the application in hand or the matter in scrutiny. Looking at the affidavit filed by the applicant especially paragraphs 12 the applicants are claiming that they received the documents in time but they could file their application for revision since the other applicants were not available. This in my view can be sufficient reasons for their delay. In my view it was the duty of applicants upon receiving the documents to trace other applicants and file their application in time given the advancement of Information and Communication technologies that has facilitated

communication through mobile phones and other means of communication.

Similarly, the applicants under paragraph 14 of their affidavit are stating that the degree of lateness is not deliberate since they were struggling to get signatories. Again, as I noted above failure to get signatories has never been a sufficient reason for one to be granted an extension of time. The applicants have failed to give reasons as to why they failed to get all signatories. In that circumstances, in my considered view the crucial issue to be determined is whether the reasons for extension of time advanced by the applicants suffice to be termed as "*sufficient reasons*". The respondents on their part have submitted that the applicant has not given any good reasons and they believe it was just her own negligent. In my considered view, a mere claim that the applicants failed to trace other signatories or applicants as a reason for delay without counting for each day cannot justify the court accept that as sufficient reason for one's delay. For the court to grant an extension of time one must clearly count for each day of his/her delay.

This court in various cases has explained circumstance where the applicant is deemed to have advanced sufficient reasons or not. The Court of Appeal in ***Ramadhani vs. Geita Gold Mining, Misc. Application No. 29 of 2013*** at pages 2 and 3 have clearly explained the guiding principle that in order to justify a court extending time there must be some material on which the court can exercise the discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time. One may

also wish to refer the decision of the court in **REGIONAL MANAGER, TANROADS KAGERA vs. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO. 96 OF 2007 (CAT UNREPORTED)**. The court went on by stating that the test then is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. The Court observed that there are two main aspects of the principle of sufficient cause namely. One of those principle is based on key issue that; whether the applicant has disclosed good cause or reasons for delay. This means that the court need to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of vey day that passes beyond the aforesaid period, lengthy of the delay that is shown that such reasons were operated for all the period of delay. In the mater in scrutiny, the applicants knowing that an order for sticking out their earlier application was made on 12/06/2019they just unjustifiably kept quiet until 30/10/2019(almost three months) when they decided to file this application. In my considered view three months is inordinate delay. I am of the considered view that, in the absence of really sufficient reasons, this was too long for one to be considered for an extension of time. As rightly pointed out by the respondent that there is no prove of any sufficient reasons under the applicant's affidavit. Their mere argument that they failed to trace other applicants without proof have no merit. If they had an intention to file their application they ought to have made efforts to file their application within time. The reasons

advanced by the applicants in their affidavit cannot at any rate be regarded as sufficient reasons for their delay and they have filed to court for each day of his delay for five months.

There are various similar authorities that have addressed similar instance as to how the court can determine the issue on whether an applicant has presented sufficient reasons that can move the court to grant application for extension of time. This can be referred to the case of **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001**, where observed and held that:

“What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant”.

The words “sufficient cause” were similarly underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 OF 2007**, where the court observed the following:-

*“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**”(emphasis supplied).*

From the above authorities I am of the firm view that the words “sufficient cause” depend on the circumstances of the case including reasons and explanations advanced by the applicant. I agree with the respondents’ State Attorney that the applicants have

not advanced and presented sufficient reasons for their delay and the extent of such delay in their application. My perusal have not seen any sufficient reason for application of an extension since the applicants have failed to show sufficient reasons.

As underscored by the Court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015**: High Court of Tanzania (Commercial Division) at Dar es Salaam (Unreported) which was cited by the applicant respondent that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.....”

Pursuant to the foregoing, I am of the firm considered view that this application has no merit since the applicant has failed to present sufficient reasons for their delay in their application. In the view of aforesaid, this application is unmerited and it is accordingly dismissed. All parties to bear their costs. It is accordingly ordered so.



A.J. MAMBI,

JUDGE

18.11. 2020

Ruling delivered in Chambers this 18th day of November, 2020
in presence of both parties.



A.J. MAMBI,

JUDGE

18.11. 2020

Right of appeal fully explained.



A.J. MAMBI,

JUDGE

18.11. 2020