



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT BUKOBA**

**(HC) MISC.CIVIL APPLICATION NO.22/2018**

**THE REGIONAL MANAGER (TRA).....APPLICANT**

**VRS**

**ATIA NASSORO.....RESPONDENT**

**RULING**

*23/10/2020 & 11/12/2020*

***KAIRO, J.***

Before me is an application for an extension of time to file an appeal out of time against the decision of the Resident Magistrate Court of Bukoba which was delivered on 31<sup>st</sup> July 2006 in Civil Case No.70/2003.

From the Affidavit in support of the chamber summons sworn by Mr. Salvatory Simsongwa Switi; counsel for Applicant, the facts giving rise to this application can briefly be discerned as follows: On 01/09/2006 the Applicant lodged Civil appeal No.6/2006 in this honourable court to challenge the decision of the Resident Magistrate court of Bukoba delivered on 31/07/2006 in Civil case No.70/2003. Thereafter the

Applicant noted that the decree accompanying the judgment to be impugned was defective due to distinct dates with the judgment. Following the said defect, the Applicant wrote a letter to the trial court to have the decree rectified and replace a correct one. His letter was acted upon by the trial court and was issued with the proper decree which he submitted to this court addressing to the District Registrar (Now Deputy Registrar) who replaced the same in the appeal case file.

On 23/09/2010, this court through his lordship Mjemas, J (As he then was) struck out the said appeal for want of competency as the procedure adopted to replace the defective decree was not legally proper. However, the court granted leave to the Applicant to re-file the appeal subject to limitation. It was on that basis that the Applicant filed an application No.36/2010 for an extension of time within which to file a competent appeal. The filled application passed through various hands of judges and lastly it was assigned to Hon. Mjemas,J who struck it out for want of prosecution and hence this current application seeking the court to extend time to appeal.

The learned counsel; Mr.Hospis Maswanyia appeared for the Applicant. When submitting, the reason for delay was categorised into two phases: the first phase covered from the time the trial court decision was given to the time the Applicant's appeal was struck out for want of competence. The second phase covered the time from year 2006 when he filed application with the proper decree after the struck out to year 2018 when he became aware that his application for extension of time was struck out for want of prosecution.

In amplifying the said phases, the Applicant's counsel submitted and averred in his adopted affidavit that after the decision of the RMs Court in civil case No.70/2003, the Applicant had filed the appeal within time on 1/9/2006 though it was later struck out as it was not accompanied by the proper decree. That the Applicant did not sleep on his right but promptly filed an application No.36/2010 for an extension of time which was later on struck out for want of prosecution on 1/7/2014.

Submitting on the failure to prosecute his application which is a second phase delay, the Applicant's counsel stated that he was not aware as the case evolved in different judges; first was Hon.Kibella,J who was assigned on 2/8/2011 but transferred and the file was re-assigned to Hon.Khaday,J on 27/7/2013. However, following the sickness of Khaday,J it was lastly assigned to Hon.Mjemas,J on 30/6/2014 who struck it out in the absence of the Applicant on 1/7/2014. But the Applicant was neither notified on the re assignment to Mjemas,J nor on the hearing date, lamented the Applicant.

It was the Applicant's further submission that he became aware of the struck-out decision in May, 2018 when the Respondent sought to enforce the decree of the Resident Magistrate court in Civil case No.70/2003. The advocate contended that from the year 2014 when his application was assigned to Mjemas,J and struck out up to year 2018, the Applicant was not aware as he was neither notified by the court nor was he served with the struck out order. He backed up his argument by citing Order XX1 (1) of the CPC Cap 33 R.E 2019 to the effect that it is the duty of the court to notify the parties on the decisions including orders. He cited the case of **Mobi Auctioneers Tz Ltd vrs NBC**

**Holding Corporation;** Civil Application No.158/2005 that it was the duty of the court to notify the party on the date of judgement delivery but the court in this matter did not serve the Applicant of the issued order.

The learned counsel went on to account for the second phase of his delay contending that that he immediately applied to be supplied with the copy of the order and obtained it on the same day save for the proceedings which he received on 4/6/2018 and promptly filed this application on 6/6/2018, which he argued shows that he did not sleep over his own right. It was the Applicant's further argument that the delay period has been accounted for to warrant this court to exercise its discretionary powers to extend time, leave alone the fact that the trial decision is tainted with illegalities. He cited the case of **Salvand K.A.Rwegasira vrs China Henan International Group CO.Ltd.** Civil Ref.No.18/2016 CAT at pg 9-11, **The Director General LAPF Pension Fund vrs Paschal Ngalo;** Civil Application No.76/08 of 2008 on pg 6 onwards where it also affirmed **China Henan case** (supra) that the time which the Applicant was pursuing his right in court is of technical delay and thus a good ground to grant an extension of time.

The Applicant's counsel further submitted that the trial judgment subject to impunity is tainted with illegalities as the Resident Magistrate court lacked jurisdiction to entertain Civil Case No.70/2003. He was to the effect that even if the reason for delay would found to be without merit, the stance of the law demands the court to extend time all the same due to prevailing illegalities in the trial court's decision. He cited the case of **Kalunga and Company Advocates vrs NBC Ltd** (2006) TLR 235.

Mr.Kabunga, the learned counsel for the Respondent vehemently opposed the application. According to him, the Applicant failed to demonstrate sufficient reason for the delay to warrant the court to exercise its discretionary power to extend time. In substantiating his argument, Mr Kabunga stated that the decree which the Applicant seeks to impugn is 14 years old since delivered on 31/7/2006. That for the court to act judiciously on its discretion, the Applicant has to show that he was prosecuting the matter with due diligence. He went on that the position however is contrary to the Applicant's actions as looking at his affidavit and oral submission, the omission depicts laxity, negligence and inaction which doesn't constitute sufficient reason to extend time. The Advocate went on that, despite the fact that the Applicant appealed in time after the trial court's decision, but he negligently attached an incompetent decree and even after noting it, he improperly replaced the same, as a result the appeal was later struck out. He argued that the Applicant was duty bound to make sure he attaches a proper decree, short of that he cannot now be heard throwing blame to the court.

Mr.Kabunga went on to depict laxity and negligence on the part of the Applicant that, the Applicant filed application for the extension of time in 2010 which is application No.36/2010 but he lastly appeared in court on 16/10/2012, which means, on 1/7/2014 when the same was struck out for want of prosecution, two years had lapsed since the Applicant had abandoned the said application. He further explained that, from 2010 to 2014 when it was struck out for want of prosecution the Applicant had appeared only once in court. The learned counsel added that there was no follow up undertaken by the Applicant while it is the duty of the party to make follow up on his/her case. He added that after it was struck out

again for want of appearance in 2014, it took four years for the Applicant to file the extension of time as he resurfaced in year 2018 for this current application.

According to Mr Kabunga, the delay is inordinate one which is incapable of any other explanation than negligence and abuse of the court process. He prayed this court not to condone such acts for whatever reason otherwise the case would be endless. He contended that the alleged illegalities are just an afterthought and has been raised for the purpose of this application since when the Applicant had formally filed civil appeal No.6/2006, the issue of jurisdiction was not mentioned. Besides, the Applicant offered no explanation as to whether the jurisdiction referred to was territorial or pecuniary. He distinguished the cited case by the Applicant to the effect that the delay was technical as he had been prosecuting his case *bonafide*, arguing that the circumstances of the present case cannot be salvaged by the cited cases as the Applicant had filed an application for extension of time but appeared once in four years and even after it was struck out he made no follow up to know what transpired in court until 2018 when the Respondent was in the process of execution. He fortified his stance by citing the case of **The Registered Trustee of Joy in the Harvest vrs Hamza Sungura:** Civil. Application No.2/2005 where the court stated that laxity and negligence on the part of the advocate does not constitute an excuse for the extension of time.

With regards to the cited case that the court ought to notify the party on the decision of striking out the case, the Respondent's counsel distinguished it from the present case arguing that in the cited case, the

court reserved the ruling and later on delivered it without notifying the parties while in the present one the Applicant had abandoned his case for two years. Thus, it was difficult to be informed on the abandoned case.

He concluded by stating that this application is intended to delay justice and it is an abuse of court process. He therefore prayed the court to dismiss it so as to pave way for the Respondent to enjoy the fruit of her decree.

In rejoinder, the Applicant's counsel reiterated that the point of jurisdiction was raised in the trial court as a P.O but was disregarded. He further clarified that, the same was the first ground of appeal in the petition of appeal which sought to challenge the Resident Magistrate decision. He elaborated that the Resident Magistrate Court was barred under section 7 of Tax Revenue Appeals Act Cap.408 R.E 2006/2019 hence the issue of jurisdiction was not an afterthought as contended by Mr Kabunga. He insisted that the Applicant in all of the said phases showed neither negligence nor laxity but was prompt to prosecute his case.

Having gone through the affidavits of both parties, heard the parties rival arguments, and upon considering the same, the question to be determined by the court is whether the application for the extension of time is meritorious.

The law is settled that in order for the court to exercise its discretionary power in extending time, sufficient cause for delay has to be demonstrated. There is plethora of authorities to this effect.

In **Oswald Masatu Mwizarubi vrs Tanzania Processing Ltd**; Civil Application No.13/2010 it was said as quoted here under: *"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon a party seeking extension of time to provide relevant material in order to move the court to exercise its discretion."*

Again, in **Royal Insurance Tanzania Limited vrs Kiwengwa Strand Hotel Limited**, Civil Application No.116/2008 CAT, (Unreported) the court observed:

*"It is trite law that an Applicant before the court must satisfy the court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application has been brought in good faith"*

In this matter, parties are at one that the sufficient cause must be demonstrated by the party seeking the extension of time. However, the point of divergence is that the Applicant believes to have been demonstrated the same while the Respondent opposes that the sufficient cause has not been established to warrant the extension of time sought.

The first phase of delay should not labour me much. It is true that from 2006 (when the Applicant filed an appeal) up to 2010 (when his appeal was struck out for want of competence) and to the date of filing an application for the extension of time to restore his appeal has been accounted for. According to record, the Applicant after noting the defect in the decree believed the same could simply be rectified by a letter. The procedure was ruled out to be improper to which I concede, and thus the Applicant's appeal was struck out. Further to that, when the appeal



was struck out the Applicant acted promptly to file an application for the extension of time to restore it. I say so because his appeal was struck out on 23/9/2010 and the application for extension of time was filed on 3/11/2010 to which in the circumstances, I consider reasonable time and without hesitation I rule out that the Applicant acted diligently in the first phase.

However, things went wrong in the second phase which with much respect, I find the Applicant has totally failed to offer reasonable explanation to account for the delay. This phase leaves a lot to be desired. After filing an application for extension of time in 2010 which was later struck out in 2014 for want of appearance, the Applicant had only appeared once in court and that is in 2012, being two years since filled. Besides, the Applicant made no follow up on the progress of his case in all four years since the same was struck out (from 2014 to 2018) until when the Respondent was in the process of executing the decree, that is when he emerged and knew that the application for extension of time was long struck out and decided to file this application in year 2018. By all standards, the period of delay is inordinate as rightly argued by Mr. Kabunga and it exhibits gross negligence on the party of the Applicant. The explanation offered by the Applicant concerning this inordinate delay is that the application passed in different judges' hands and that he was not being notified on the said changes. The explanation confirms the slackness and no following-up of the case otherwise the Applicant would have known the said shifting of hands. In my conviction, the explanation is not a plausible with due respect. The fact that the case file shifted hands has no relationship with failure to follow up the case so as to know what was going on regarding the case in my

view since the file was still in the same court and was adjourned several times due to the Applicant's absence. It should be known categorically that the court is not a packing place and such a behaviour of turning it to such a place cannot be accepted. One cannot be left to institute a matter and decides to come to court to prosecute it as and when he feels like. Sincerely, to make an appearance once in four years is by all standard carelessness of a highest degree for the party interested in prosecuting his/ her case, and to say the least it is not expected from the Applicant being an Institution with various employees including lawyers. Surprisingly, when resurfaced, lame excuses were given and a scape goat was found that the Applicant wasn't aware of the presiding judge as the file was shifting hands (*sick*). In my conviction, this depicts lack of seriousness and laxity on the part of the Applicant which this court is not ready to condone. I am therefore inclined to agree with the Respondent's counsel that for the period of four years the Applicant had totally abandoned his case.

It should further be noted that the decree which the Applicant is seeking to impugn is 14 years old as rightly contended by Mr. Kabunga. It is the policy of the state that litigation should come to an end so that parties can continue with their productive activities. [ Refer the case of *TAZARA V.D.G. Halikons and Another [1979] LRT 21*].

The Applicant has also submitted that the decision to be impugned is tainted with illegality as the trial court lacked jurisdiction. This was opposed by Mr. Kabunga arguing it to be an afterthought raised for the purpose of only extending time but the Applicant responded that it was the P.O raised at the trial. I am alive that illegalities in the decision to be impugned warrants an extension of time. However, I have passed

through the record of the trial court and found that the plaintiff at the trial court (Respondent herein) prayed for court's declaration that the sale of the motor vehicle by the Applicant herein was illegal as the owner of it was the Respondent's son who donated it to her and not one Hamisi Salali Aljabri who was alleged to have evaded the payment of revenue. In the circumstance therefore, the crux of the dispute was on ownership of the vehicle and not revenue and this is the reason why the objection on jurisdiction raised was overruled by the trial court.

I am further alive that Sec 7 of the Tax Revenue Appeals Act No. 15/2000 has ousted the original jurisdiction from the normal courts on civil matters concerning revenue but since the dispute at hand hinged on the vehicle ownership, it goes that the issue of lack of jurisdiction doesn't arise and in the same veins the contended illegality doesn't arise as well.

In recap therefore it is the finding of this court that, the Applicant was not prosecuting his case diligently as there was laxity and negligence on his party. Given the circumstances of this case as discussed above, it is my considered view that this application has not been brought in good faith but an abuse of court process as rightly contended by Mr Kabunga, the Respondent's learned counsel. It is therefore dismissed with cost for want of sufficient cause to warrant the extension of time sought.

It is so ordered.



  
L.G. Kairo

**JUDGE**

11/12/2020

R/A Explained.

  
L.G. Kairo  
**JUDGE**

11/12/2020

**Date:** 11/12/2020

**Coram:** Before Hon. Kairo, J

**Applicant:** Absent

**Respondent:** Advocate Frank John.

**B/Clerk:** Gosbert Rugaika

**Court:** The matter is for ruling. The same is read over before Advocate Frank John for the Respondent but in the absence of the Applicant in chambers today 11/12/2020.



  
L.G. Kairo  
**JUDGE**

11/12/2020