

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. CIVIL APPLICATION NO. 29 OF 2020
(From the decision of the District Court of Mbarali at Rujewa
in Civil Appeal No. 05 of 2019 and
Original Civil Case No. 05 of 2018 Ilongo Primary Court)

FURAH MWAUKUKA.....APPLICANT
VERSUS
MAKA RUBENI.....RESPONDENT

R U L I N G

Date of last order: 29/10/2020

Date of Ruling: 17/12/2020

NDUNGURU, J.

In this application, the applicant one, Furaha Mwaikuka, is seeking extension of time within which to appeal out of time before this Court against the decision of the District Court of Mbarali in Civil Appeal No. 05 of 2019. The application is supported by the affidavit duly sworn by Furaha Mwaikuka, the applicant. In opposition the applicant's application, the respondent one, Maka Rubeni filed the counter affidavit which sworn by the respondent himself.

At the date of the hearing of this application, both parties appeared unrepresented, fending themselves. Upon the prayer of the parties and for the interest of justice, this Court allowed the application be argued by way of the written submissions and they complied with the filing schedule save for the rejoinder submission filed by the applicant which was filed out of time without the leave of this Court.

In support of his application, the applicant submitted that, the decision of the first appellate Court is tainted with the illegality which if left to stand will set bad precedent. He added that, there is incurable irregularities in the decision of the first appellate Court cannot be curable unless this application is granted.

He relied on the case of **VIP Engineering and Marketing Limited & 2 others vs. Citi Bank Tanzania Limited**, Consolidated Civil Reference No. 6/7/8 of 2006 (unreported) to support his submission.

Again, the applicant argued that, there was no any delay to file this application for extension of time to appeal out of time, the appeal was struck out on 24th day of June, 2020 while the copy of proceedings, judgment and decree extracted on 26th day of Jun, 2020. He added that, the said requisite documents received by the him on Monday 29th day of

June, 2020 and after two days on 2nd day of July, 2020 the applicant filed the present application.

He further stated that, he acted diligently and without delay. He also cited the case of **Karibu Textile Mills vs. Commissioner General (TRA)**, Civil Application No. 192 of 2006 (unreported) to bolster his argument. In conclusion, he prayed for the Court that this application be granted. Also, he stated that, he was misrepresented by fault memorandum of appeal due to the slip of pen of the drawer.

In reply, the respondent argued that, there is no genuine reason assigned for the delay. Also, he insisted that, the failure to file proper appeal is caused by the negligence of the applicant and the reason that the applicant is a layman is not the defence.

He continued to submit that, the allegation of the illegality is unfounded and intends to mislead and waste time of the Court. He added that, the alleged illegality is that the matter is not time barred while the matter is time barred. He further stated that, the applicant cited the cases without attaching the same.

Again, he stated that, the faulted memorandum of appeal drawn by the applicant is not a slip of pen and this defence is unfounded. He added that, the applicant failed to account for the delay. He cited the case **Karibu Textile Mills vs. Commissioner General (TRA)**

(**supra**) to cement his submission. Finally, he prayed for the Court to dismiss this application with costs.

After carefully considered parties' submissions, the Court's record and the pleadings filed before this Court, the issue calling for the determination is whether or not the applicant advanced the sufficient cause to convince the Court to extend time.

Having heard both parties, I have drawn intensive attention on the powers of this Court to grant extension of time. Undeniably, this Court has wider and broader power; so long there are adequate reasons advanced by the applicant for the Court to exercise its discretionary power.

Nevertheless, such discretionary powers have to be exercised judiciously with the consideration of factors which have been observed in various decisions. Also, it is settled principle of the law that, the duty of the applicant is to deliver the sufficient cause to convince the Court to invoke its discretional power in extending time. I would like to find an inspiration in the case of **Shant vs. Shi Ndocha & others (1973) EA 207** where the Court observed that:

"The application for extension of time is concerned with showing sufficient reasons why he should be given more time and the most persuasive reason that he can show the

delay has not been caused or contributed by dilatory conduct on his part”.

Also in the case of **Mbogo vs. Shah (1968) EA 93** where the Court stated that:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. Those factors include the length, the reason for the delay, whether there is an arguable case on appeal and the degree of prejudice to the defendant if time is not extended."

Turning to the merit of this application, the applicant claimed that, he was delayed to file his appeal on time before this Court on the ground that, first the decision of the first appellate Court is tainted with illegalities and second the applicant spent time in PC. Civil Appeal No. 18 of 2019 which was later strike out by this Court.

To begin with the first ground for the delay, the applicant has anchored his application on the ground of there being an illegality in the decision of the first appellate Court. As often stressed by the Court, for this ground to stand, the illegality of the decision subject of challenge must clearly be visible on the face of the record and the illegality in focus must be that of sufficient importance.

In my considered view, the alleged illegalities are not apparent on the face of the impugned decision of the first appellate Court and the

same would be discovered by a long drawn argument or process. Therefore, this ground for extension of time has baseless.

See the case of **Wambura N.J. Waryuba vs. The principal Secretary Ministry of Finance & another**, Civil Application No. 225/01 of 2019 Court of Appeal of Tanzania and **Timothy Daniel Kilumile Co. Ltd. vs. Hillary Patrice Otaigo t/a Nyakanga Filling Station**, Civil Application No. 365/16 of 2017, Court of Appeal of Tanzania (both unreported).

In relation to the second limb of the application, it is clear that, the applicant had duly lodged the PC. Civil Appeal No. 18 of 2019 on time before this Court but the same was struck out due to incompetence of the said appeal. It is my considered opinion that, the entire period up to 24th day of June, 2020 when that appeal was struck out constitutes an excusable technical delay.

Again, I would go along with the Court's record as whole the applicant promptly and diligently re-approached the Court on 02nd day of July 2020 to launch the present pursuit for extension of time after his initial appeal being struck out. It means therefore, that the entire period of delay has been duly accounted for.

The same principle is well elaborated in the case of **Victor Rweyemamu Binamungu vs. Geofrey Kabaka & another**, Civil

Application No. 602/08 of 2017 (unreported) where the Court of Appeal of Tanzania sitting at Mwanza inter alia stated that:


"The period thereafter to 4th December, 2017 when the application for revision was struck out, constitutes technical delay which should not be blamed on the applicant. The applicant lodged this application on 11th December, 2017, barely seven days later."

Also see the case of **Emmanuel R. Maira vs. The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010, Court of Appeal of Tanzania (unreported). In addition, I have taken into account that, it does not appear that the respondent is likely to suffer any prejudice if time is extended.

For that reason, I find and hold that the applicant has been able to advance good cause for the delay which justifies extension of time, as I accordingly do. Leave is hereby granted for the applicant to file his intended appeal within 30 days from the date of this ruling. No order as to costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
17/12/2020

Date: 17/12/2020

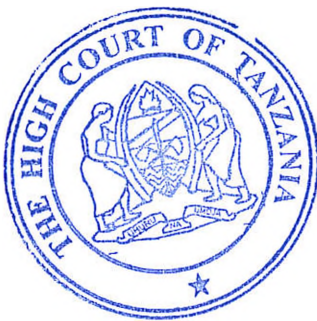
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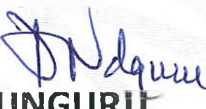
Applicant: Present

Respondent: Present

B/C: M. Mihayo

Court: Ruling delivered in the presence of both parties today this
17th day of December, 2020.




D. B. NDUNGURU
JUDGE
17/12/2020