

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY**

AT MOSHI

MISC. CIVIL APPLICATION NO. 32 OF 2018

FAUSTIN SUNGURA ----- APPLICANT

VERSUS

MANAGER DAR EXPRESS BUS

SERVICE MOSHI BRANCH ----- 1ST RESPONDENT

MANAGING DIRECTOR, DAR

EXPRESS BUS SERVICE DAR ES SALAAM ----- 2ND RESPONDENT

RULING

MUTUNGI .J.

The Applicant has moved the court through a chamber summons supported by his Corresponding Affidavit. The same has been preferred under Section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E. 2002. In essence the Applicant is seeking for the following orders: -

- a) That the Honourable Court be pleased to grant an extension of time within which to file an application of leave to appeal to the Court of Appeal.

- b) Costs of this application to be provided for.
- c) Any other order/relief that, this court deems fit and just to grant.

The matter was ordered to be argued by way of written submission. In his written submission and Affidavit, the Applicant submits that, he was the Respondent in Civil Appeal No. 8/2010 before this court and thereafter aggrieved by its decision delivered on 23/03/2015. He decided first to file an application for leave to the Court of Appeal and the same was unfortunately struck out. The Applicant then took a step further and filed an application for extension of time within which to file an application for leave to appeal which too was struck out. On 14th September, 2018 another application for leave to appeal was struck out. The Applicant has annexed copies of all these decisions to the application.

Despite the striking out of the various applications, the Applicant still has an intention to go before the Court of Appeal to seek for his right. In view thereof the Applicant prays that his application be granted.

The Applicant further fault's the Respondents' Counter Affidavit in that it was filed out of time. He contended the Respondents were served on 28/06/2019 and the same was to be filed on or before 19th July, 2019. For some unknown reasons the Respondents did not file their Counter-Affidavit up to 13th October, 2019 when they were granted leave to file the same. It is the settled opinion of the Applicant that, the decision to grant the Respondents an opportunity to file their Counter-Affidavit was not in conformity to the law of the land. In that regard the same should be expunged from the record. To this the Applicant cited the case of **Faustin Sungura V. Managing Director, Lozandu Auction Mart, Court/Tribunal Broker, Civil case no. 2/2010 (unreported)** in support thereof.

Lastly, the Applicant in his submission has invited the court to have a look at the person who has signed the Counter Affidavit (Deponent). He elaborates that, the said Deponent is not the purported PETER ELIUFORO SHAYO. In that regard the Counter Affidavit is not sworn by a duly authorized Agent/Advocate but a stranger representing Peter Eliuforo Shayo.

On the other side of the coin, Mr. P. E. Shayo Learned Advocate representing Respondents responds that the genesis of the dispute started before the Resident Magistrate's Court at Moshi in Civil case no. 14 of 2007 where the Applicant was seeking for compensation of Tshs. 200,000/= for a parcel that got lost on the way from Moshi to Dar – es – Salaam which was being transported by the second Respondent's bus, namely "Dar Express Bus." The court did award the Applicant Tshs. 45,000,000/= as specific damages. In view thereof the Respondents filed with this court Civil Appeal no. 8 of 2010 which was before Hon. Sumari J. and a decision delivered on 23/03/2015 the outcome was that the Respondent was awarded Tshs. 2,000,000/= as general damages.

Aggrieved by the said decision the Applicant went on a spree of filing various applications to have time extended to appeal to the Court of Appeal. The most recent one being Miscellaneous Application No. 36 of 2017 before Hon. Fikirini J. which was struck out. It had taken 74 days for the Applicant to file the present application.

It is the submission of the Respondents' Counsel that, the Applicant has not demonstrated sufficient reasons or grounds for such a delay in filing the present application. In support of his proposition the Learned Counsel invites the court to the cases of **GODWIN NDEWESI and KAROLI ISHENGOMA V. TANZANIA AUDIT CORPORATION [1995] TLR 200, JOSEPH PAUL KYAUKA NJAU AND CATHERINE PAUL KYAUKA NJAU V. EMMANUEL PAUL KYAUKA NJAU AND HIACINTHA PAUL KYAUKA NJAU, APPLICATION NO. 7/2016 (CAT-ARUSHA), LYAMUYA CONSTRUCTION COMPANY LTD. V. THE BOARD OF TRUSTEES, YOUNG WOMEN CHRISTIAN ASSOCIATION, Civil Application No. 2/2016 (CAT-Arusha).**

The Learned Counsel further avers that the signature appearing on the Counter-Affidavit is his. The foregoing notwithstanding, the Respondents filed their Counter-Affidavit following leave granted to them by this court. In that regard questioning the legality of the Counter-Affidavit at this stage is misconceived.

Having gone through the rival submissions the issue is whether the Applicant has advanced sufficient reasons to justify the grant of the application. Section 11 of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 provides as follows: -

“Subject to subsection (2), the High Court and, where an appeal lies from a subordinate Court exercising extended powers, the Subordinate Court concerned may extend the time for giving notice of intention to appeal from a Judgment of the High Court or of the Subordinate Court concerned for making an application for leave to appeal or of a certificate that the case is a fit case to appeal, notwithstanding that the time for giving the notice or making the application has already expired.”

From the outset the court is to ascertain as to whether the Applicant has advanced sufficient reasons or not. It is trite law that, among other factors to be considered are whether or not an application has been brought promptly, the absence of any valid explanation for the delay and lack of diligence on the part of the Applicant.

In the case of **Tanesco V. Mufungo Leonard Majura and 15 others, Civil Application no. 94 of 2016 (CAT-unreported)** the Court of Appeal stated the test conditions to verify whether the Applicant has advanced sufficient reasons. At page 10 the Court of Appeal cited with approval the case of **Lyamuya Construction Company Ltd. V. Board of Trustees of Young Women's Christians Association of Tanzania (Supra)** where it was held: -

- a) The Applicant must account for the delay for the period of delay.*
- b) The delay should not be inordinate.*
- c) The Applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take.*
- d) If the court feels that, there are other reasons such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.*

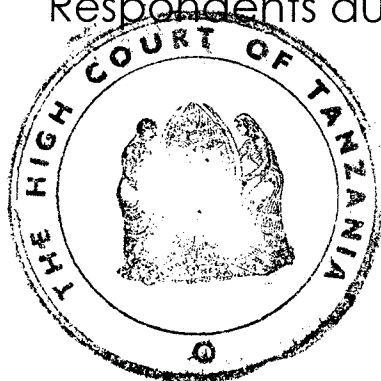
I have painstakingly and thoroughly gone through the Applicant's submission and Affidavit; I find no trace of any advanced reasons for the delay. As properly submitted by the Respondents' Counsel the Applicant had delayed for

about 60 days after the delivery of Hon. Fikirini .J.'s decision (25/07/2018) up to the institution of the instant application (24/09/2018). In the court's settled view, given the foregoing scenario it is obvious the Applicant simply sat on his right and was inactive in processing this application. He has failed to account for each day's delay as envisaged by the authority I have cited. In its totality, the Applicant has failed to demonstrate sufficient reasons for the delay.

The Applicant seems to be moving from the back door and raising what would seem to be a Preliminary objection against the Respondent's corresponding Counter Affidavit. Perusing through the record, I have gathered that the Respondents were granted leave to file their Counter Affidavit hence the reason they filed the same a bit late. In that regard it would be wrong to invalidate the Counter Affidavit at this stage. The same goes for the alleged forged signature on the Counter Affidavit which the Respondents' Advocate has tried to explain and clear the confusion in his submission.

In the upshot the application is dismissed with costs.

Read this day of 25/03/2020 in presence of Mr. Vicent Mramba (the Applicant's relative) and in absence of the Respondents dully notified.




B. R. MUTUNGI

JUDGE

25/03/2020

RIGHT OF APPEAL EXPLAINED


B. R. MUTUNGI

JUDGE

25/03/2020