

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

MISCELLANEOUS CIVIL APPLICATION NO 21 OF 2019

(Originating from Miscellaneous Civil Application No 30 of 2015 at Musoma District Court)

FINCA TANZANIAAPPELLANT

Versus

LEONARD ANDREW KOROGO RESPONDENT

RULING

1st & 21st April, 2020

Kahyoza, J.

The respondent Leonard Andrew Korogo, successfully sued the applicant, Finca Tanzania in the District Court at Musoma, claiming Tshs 10,350,000/=, interest and costs. The respondent won the case vide an *ex parte* judgment which was delivered on 23rd April 2015.

The applicant filed an application to set aside *ex-parte* judgment via Application No 30/2015 which was dismissed by the trial court. Aggrieved by the dismissal, the applicant appealed to the High Court of Tanzania Mwanza District Registry through Civil Appeal No 02/2016. While the appeal was pending before the High Court, the applicant discovered that date in the ruling and in the extract order differed. He withdrew the appeal and filed an application before the trial court for correcting the date in the extract order. It was application No 07/2019. The trial court granted the application on the 10/09/2019 and ordered the correction to be made.

The applicant, after the trial court corrected the extract order, discovered that she was time barred to lodge an appeal. She instituted the instant application for extension of time to lodge the appeal out of time.

The issue for determination is whether the applicant adduced sufficient reasons for the extension of time to file her appeal.

The applicant was represented by the learned advocate Mr. Willbard R. Kilenziand and the Respondent appeared in personal, unrepresented. The applicant's advocate submitted that the first appeal was lodged on time but later the applicant realized that the extract order and the ruling had different dates and therefore, she withdrew the appeal with the leave to refile it. She applied for rectification of the drawn order but after the order was rectified she found herself out of time.

The learned counsel for the applicant further argued that the defect in drawn order was caused by the court and the applicant was not to be blamed and he refer to Section 21 (2) of the Law of Limitation Act Cap 89 R.E 2002 in support of his stance.

The counsel for the applicant argued further that the ruling the applicant intended to appeal against was irregular because the trial gave an *ex-parte* judgment without proof that the defendant was served and the trial court accepted an oral explanation from the respondent. The respondent was a plaintiff in that case.

Furthermore, the applicant contended that the court did not inform the applicant who was the defendant, the date of delivering the *ex-parte* judgment as required by the law. He entreated the Court to grant the reliefs sought on Chamber Summons with costs.

The respondent replied that the applicant's advocate was not serious to attend and follow this matter. He promised to file an application before Honorable Siyani J. and failed to do. He prayed to proceed with the

execution of decree.

In his rejoinder, the applicant's advocate replied that it was true that he attended the court and filed a defence and later the matter was dismissed for want of prosecution. The respondent applied to restore it without serving the applicant.

I seriously considered the submissions of both, the learned counsel for applicant and the respondent. The applicant seeks for the extension of time under Section 95, and Order XLIII R. 2 of the Civil Procedure Code, Cap 33 R.E 2002 and Section 14 (1), 21(2) of the Law of Limitation Act, Cap 89 R.E 2019 which requires the parties to show good cause for the delay. It states-

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

And Section 21(2) state that

"In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it".

It is settled that in an application like the instant one, the applicant has to exhibit a good cause or sufficient reason for delay. See **Mumello v. Bank of Tanzania** [2006] E.A. 227 where it was observed that-

"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."

It is also clear that, what amounts to sufficient cause is relative one. It depends on the circumstances of each case. See **Osward Masatu Mwizarabu V Tanzania Fish Processors LTD** Civil Application No 13 of 2910 (Unreported) where the Court of Appeal stated, thus-

"The term good cause is relative one and is depend upon the circumstance of each individual case. It is upon the party seeking extension of time to provides the relevant material in order to move the court to exercise its discretion"

It is beyond dispute from the submission and record that the applicant appealed on time but later she discovered that the appeal was defective on the account that the date in the drawn order differed from the date in the ruling. The applicant was not to blame for that defect. She withdrew the appeal and applied to have the defect rectified. The same was rectified when the time within which to appeal had elapsed. I am of the firm view that this ground is a sufficient reason to warrant the application to be granted. It amounts to a technical delay which the applicant was not to blame.

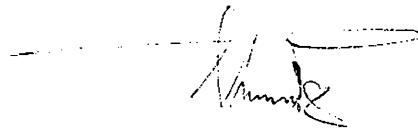
It is trite law that technical delays are excusable. This stance was enunciated by the Court of Appeal in **William Shija and another v. Fortunatus Masha**[1997] T.L.R.213. The Court of Appeal stated the

following -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

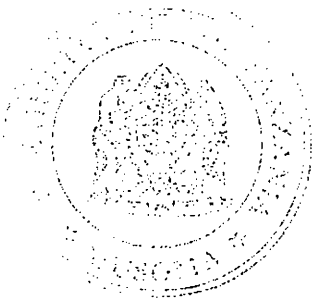
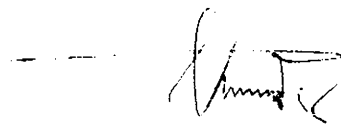
In the upshot, the application is granted. The applicant is given 14 days' leave, from the date of this ruling, to institute the intended appeal. Costs shall be in due course.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
21/4/2020

Court: Ruling delivered in the presence of the applicant's advocate Ms. Anna Mwangosya and the applicant in person. **Copies of the Ruling to be dispatched to them.** B/C Mr. Charles present.

J. R. Kahyoza
JUDGE
21/4/2020