

**THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 19 OF 2020**

*(Arising from the Decision of the Juvenile Court of Ilemela District at mwanza  
in Misc. Civil Application No. 08 of 2019)*

**PETER JACKSON LUPENZA ..... APPLICANT**

**VERSUS**

**NEEMA TEMU ..... RESPONDENT**

**RULING**

*Last Order: 19.05.2020*

*Ruling Date: 20.05.2020*

**A.Z MGEYEKWA, J**

The applicant filed an application for extension of time to file an appeal against the Ilemela District Court in Misc. Civil Application No.08 of 2019. The application is made under section 14 (1) of the Law of

Limitation Act, Cap.89 [R.E 2019]. The application was accompanied by an affidavit sworn by Peter Jackson Lupenza, the applicant. The respondent filed a counter-affidavit sworn by Neema Temu, the respondent.

The hearing proceeded via audio teleconference, Mr. Felix, learned counsel represented the applicant, and Mr. Njau, learned counsel represented the respondent, both were remotely present.

In supporting the application, the applicant's Advocate prayed for this Court to adopt the applicant's application and form part of his submission. Mr. Felix submitted that the applicant was not aware that the judgment was delivered on 2<sup>nd</sup> August, 2019 and the lower Court records are silent. Mr. Felix submitted that the law of the Child (Juvenile Court Procedure) Rules, 2016 (GN. No. 182 of 2016) requires an appeal against a Juvenile Court decision to be accompanied by copies of judgment and Court proceedings. He added that the applicant wrote a letter on 26<sup>th</sup> August, 2019 requesting for copies of judgment and Court proceedings in order to initiate an appeal.

It was Mr. Felix's further submission that the time limit for filing an appeal in accordance with GN. No. 182 is 14 days from the date when the decision was pronounced. He went to submit that the copies were issued on 18<sup>th</sup> September, 2019, 49 days passed from the date when the ruling was delivered and the Court proceedings were obtained on 6<sup>th</sup> September, 2019 after 30 days from the date when the Judgment was delivered, thus the applicant was already out of time. The learned counsel for the applicant submitted further that the applicant lodged a Misc. Application No. 146 of 2019 dated 24<sup>th</sup> September, 2019 the same was before Hon. Ismail, J. He added that the application was not determined on merit because it had technical error thus the same was withdrawn. He went to submit that on 5<sup>th</sup> March, 2020 the applicant filed the instant application Misc. Civil Application No. 19 of 2020.

He continued to submit that the days waiting to be supplied with copies of judgment and Court proceedings are excluded as per section 19 (2) of the Law of Limitation Act and the exclusion is not automatic, one needs to apply to move the Court by applying for extension of time. Mr. Felix fortified his submission by referring this Court to the case of **Lewin Renald Mgala v Rogers Kombya and 2 Others**, Land Appeal

No. 33 of 2017 High Court at Mbeya and the case of **Mary Kimaro v Halfani Mohamed** TLR 1995 204. He went on to submit that the Court of Appeal in the case of **Kisoti Emmanuel v Zacharia Emmanuel** Civil Appeal No. 140 of 2019 insisted on the importance of applying for extension of time.

The learned counsel for the applicant further stated that the applicant did not relax at home after filing an application before Hon Ismail, J he had with due diligence made a follow up to file his appeal out of time. Mr. Felix valiantly submitted that the applicant should not be condemned for filing an appeal out of time by fault made by the lower Court. He added that the applicant was in Court corridors to pursue his constitutional rights to file an appeal out of time against the decision of the District Court of Ilemela.

In conclusion, the learned counsel for the applicant prays this Court to grant the applicant's application.

I reply thereto, the respondent prays for this Court to adopt the counter affidavit of the applicant and form part of his submission. Mr. Njau submitted that this Court has discretionary powers to grant this

application but the power to be exercised judiciously. It was Mr. Njau's submission that the applicant has not adduced sufficient reasons since he has not accounted for each day of delay, starting from 26<sup>th</sup> day of August, 2019 when the District Court issued its judgment there is no any record shown that the applicant filed an appeal within time. He went to submit that the applicant's advocate submission differs from what is stated in the affidavit, in particular, paragraph 12 that he claimed that he was supplied with copies of judgment and Court proceedings on 19<sup>th</sup> September, 2019. Mr. Njau insisted that the applicant did not account for the days of delay from 19<sup>th</sup> September, 2019 to 5<sup>th</sup> March 2020.

Mr. Njau forcefully argued that the applicant filed an appeal after realizing that the application for execution was delivered. He referred this Court to the case of **Zuberi Nassoro Mohamed v Mkurugenzi Mkuu Shirika la Bandari Zanzibar** Civil Appeal No. 93/ 60 of 2018 and the case of **Ramadhani Mohamed v M Mtwana**, Civil Appeal No. 52 of 2017 and the case of **Dar City Council v S Group** Civil Application No. 214 of 2010. He lamented that if the applicant filed an application before Hon. Ismail, J then they were supposed to serve the respondent but they did not do so. He added that they could serve the

respondent and pray to amend the application but they remained silent until 5<sup>th</sup> March, 2020 when they filed the instant application.

In conclusion, M. Njau insisted that the applicant has failed to account for each day of delay and he urged this Court to find that the applicant had an endless evil motive. He prays this Court to dismiss the applicant's application.

In his rejoinder, Mr. Felix reiterated his submission in chief and submitted that they could not file an appeal without attaching the copies of judgment and Court proceedings because it is a mandatory requirement under Rule 123 of the GN No. 182. He admitted that the Court in exercising its discretionary power has to exercise judiciously. He went on to state that the Court is required to consider all relevant factors as stated in the case of **Mbogo v Shah** 1968 EALR such as length, reason for the delay, and whether there is an arguable ground.

Mr. Felix insisted that from 29<sup>th</sup> September, 2019 all the time until now the applicant was in Court corridors to pursue his rights to appeal. He conceded that the applicant could account for each day of delay but in the instant application the records clearly reveal that the applicant

was pursuing his right in Court. To support his submission he cited the case of **Fortunatus Macha v William Shija and Another** [1997] TLR 154. He added that the present application is not related to real delay but actual delay, the delay is not caused by the negligence of the applicant instead it is a technical delay.

He concluded by informing this Court that the applicant informed the trial court that he has filed an application for extension of time to file an appeal against the District Court of Ilemela but the trial Court ignored the applicant's submission and continued to execute its order. He prays this Court to allow the application.

After carefully considering the competing arguments of both learned counsels, I figure out that the main issue calling for determination is whether or not the applicant has shown good cause for the delay in the circumstances of this case.

There is no gainsaying that a party seeking the court to extend time within which to do an act beyond the time by law has to show good cause for the delay. For this court to grant an extension of time, the

applicant is required to satisfy the Court, *inter alia*, that there is merit in the appeal, the extension of time will not cause undue prejudice to the respondent and the delay has not been inordinate.

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter affidavit with relevant authorities. The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo v Shah** (supra).

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne**



**D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few. In the instant case the applicant has stated that the applicant has been diligently making follow-ups and that Misc. Application No. 146 of 2019 was withdrawn then the applicant was making a follow up to file an appeal out of time.

Needless to say, the Court has gone further to interpret and distinguish categories of delay between real delay and technical delay for purposes of determining whether the application for extension of time merits granting or not. This was clearly stated in the landmark case of **Fortunatus Masha v William Shija & Another** (supra) in which the Court held that:-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which only involved technical delays in the sense that the original appeal was lodged in time but has 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."*

From the oral submissions by the learned counsel for the applicant it is evident that the applicant had delayed filing his appeal on time for the reason that the applicant was waiting to obtain copies of judgment and Court proceedings of the trial Court. It is also on the record that after the applicant was dissatisfied with the decision of Hon. Kalegeya, RM, and after obtaining the copies on 18<sup>th</sup> September, 2019, the applicant promptly on 24<sup>th</sup> September, 2019, filed a similar application Misc. Application No. 146 of 2019 before this Court. However, the Application was withdrawn based on the technicalities ground. Thus, the instant application is one of the technical delays rather than real delays.

On the contrary, the learned counsel for the respondent denied the averments of paragraph 12 of the affidavit that the applicant did not account for each day of delay, in particular from the date when the Misc. Civil Application No. 146 of 2019 was withdrawn to the date when he filed the instant application the applicant did not account for every single day of delay. Reading from the submission by Mr. Felix he stated that the applicant was not idle he was in Court corridors making follow up to make sure that he exercises his constitutional right to file an appeal out

of time. Although the applicant did not file the instant application immediately after withdrawing the Misc. Civil Application No. 146 of 2019 but the records show that the applicant made efforts to pursue his appeal. The applicant's in his affidavit has narrated the entire reasoning as to why and what happened to him to delay to file an appeal within time.

Moreover, Mr. Felix in his submission convinced this Court to find that the applicant's delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Masha** (supra), **Salvand K.A Rwegasira v China Henan International Group Co. Ltd** Civil Reference No. 18 of 2006, and the case of **Bank of Tanzania Limited v Enock Mwakyusa** Civil Application No. 520/18 of 2017 (unreported), to mention but a few.

I also consider the fact that the right of appeal is not only a statutory one but also a constitutional right, of which a person cannot be lightly denied when the 1<sup>st</sup> appellate Court is there to determine the applicant's rights.

In my view, once an appeal is eventually lodged the High Court, it will have to determine unpretentious issues brought by the applicant. I will, in the circumstances exercise my discretion under section 14 (1) of the Law of Limitation Act Cap. 89 [R.E 2019] and grant the applicant's application for extension of time to file an appeal before this Court within 14 days from today.

Order accordingly.

Dated at Mwanza this date 20<sup>th</sup> May, 2020.



  
A.Z.MGEYEKWA

**JUDGE**

20.05.2020

Ruling delivered on 20<sup>th</sup> May, 2020 via audio teleconference, Mr. Felix, learned counsel for the applicant was remotely present and he was holding brief for Mr. Njau, learned counsel for the respondent.

  
A.Z.MGEYEKWA

**JUDGE**

20.05.2020