

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISCL. CIVIL APPLICATION NO. 637 OF 2020

MOHAMED BASHIRU NYIRIHANI APPLICANT

VERSUS

KIBUNA RASHIDI MOHAMED RESPONDENT

Date of last Order: 25/5/2021

Date of Ruling: 11/6/2021

R U L I N G

MGONYA, J.

The Applicant, **MOHAMED BASHIRU NYIRIHANI** filed a Chamber Summons **under section 14 (1) of the Law of Limitation Act, Cap. 89 [R. E. 2002]** praying for the following orders:

- 1. That this, Honorable Court may be pleased to extend time within which to set aside dismissal order of the appeal out of time;***
- 2. Costs of this application be provided for; and***
- 3. Any other order orders as this Honorable Court may deem fit and just to grant.***

The Application is supported by an Affidavit affirmed by **Mohamed Bashiru Nyirihani** the Applicant herein.

When the Application came up for hearing on 14th April 2021, from both parties' prayer, I ordered the Application be disposed by way of written submissions. The said order has been duly adhered to, hence this Ruling.

In the instant Application, the Applicant through his Affidavit has submitted the reason for delay to file for an Application for setting aside the dismissal order within statutory time was not contributed by his negligence but rather from the breakdown of communication from the lower court where he lodged his appeal. He said, it was difficult for him to be informed that his Appeal has already been forwarded to this court for determination. Whereas upon asking, he was told that the matter was yet to be forwarded to this court for determination.

The Applicant further averred that the knowledge that the his Appeal was dismissed for want of prosecution took time since it was out of the Applicant's knowledge until when he was served with the bill of costs by the Respondent herein. The Applicant averred that, by then, the time to file application to restore the appeal had already lapsed.

From the above enlightenment, Applicant prayed the court to grant the order sought.

Responding to the Application, the Respondent vigorously objected the Application and she was of the view that it was the Applicant's negligence which resulted into dismissal order for want of prosecution and further failure to file his application to restore the same within time. After her submission countering the Application, the Respondent prayed this court to dismiss the Application in its entirety for lack of merit with costs.

Before I venture to determine the merits of the Application, I wish to make an observation that; indeed it is trite Law that an Application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding is that **there must be sufficient cause for so doing.**

I understand that it is difficult to attempt to define the meaning of the words "**Sufficient Cause**". However the Court of Appeal of Tanzania in the case of ***THE REGISTERED TRUSTEES OF THE ARCHDIOCESE OF DAR ES SALAAM VS. THE CHAIRMAN BUNJU VILLAGE GOVERNMENT & 4 OTHERS*** in Civil Appeal No. 147 of 2016 observed that:

"It is generally accepted however that the words should receive a liberal construction in order to advance substantial justice when no negligence or

inaction or want of bonafides is imputable to the Appellant”.

The crucial question in this matter is whether the Applicant has established **“Sufficient Cause”** to warrant this court to employ its discretionary power of grant an Application to grant the prayer sought after the Applicant has failed to file his Application for restoration of his appeal after the same was dismissed for want of prosecution.

It should be observed that the term **“Sufficient Case”** should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the Applicant’s power to control or influence resulting in delay in taking any necessary step.

Going through **paragraphs No. 4, 5, 6 and 8** of the Applicant’s Affidavit and the submission thereto, I have detected that the Applicant had done all that he could in making follow-up of his Appeal at the trial court in vain. In the circumstances, indeed there was no way that he could have known that the Appeal has already reached this court. In the event therefore, I don’t see any negligence from the Applicant in that event. Under the situation therefore, **I am satisfied that sufficient reason for the court to grant an order sought has been demonstrated.**

Since I have been of the view that the delay was with sufficient cause, for the reasons stated, **the Application for extension of time to file restoration order is accordingly granted as prayed.**

Further, the Applicant is to file the intended Application to for restoration of the Appeal **within 14 days' time from the date of receiving a copy of this Ruling.**

It is so ordered.

I make no order as to costs.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

**L. E. MGONYA
JUDGE
11/6/2021**

Court: Ruling delivered in chamber in the presence of the Applicant in person, the Respondent in person and Ms. Msuya Bench Clarke in my chamber today 11th June, 2021.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

**L. E. MGONYA
JUDGE
11/6/2021**