

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

**MISC CIVIL APPLICATION NO 21 OF 2020
(Arising from Ruling and Order of the High Court of Tanzania at Shinyanga
in Civil Case No. 4 of 2018)**

MALYUTA EMANUEL APPLICANT

VERSUS

THE MANAGER, BUZWAGI GOLD MINE.....RESPONDENT

RULING

11th/3/2021 & 19/3/2021

MKWIZU J

On 4th September, 2020, applicant Malyuta Emmanuel filed an application before this court for the following orders

- 1. That this Honourable Court may be please extend the prescribed time limited for lodging a notice of appeal so as to file a memorandum of Appeal to the Court of Appeal of Tanzania from the Ruling and Orders of the High Court of Tanzania at Shinyanga (Ms. Justice R.A EBRAHIM, J dated 26/07/2019 in Civil Case No. 4 of 2018.*
- 2. Costs of this case application be provided for; and*

3. Any other and further relief as this honourable court may deem fit and just to grant.

The chamber summons was made under the provisions of section 11 (1) of the Appellate Jurisdiction, (Cap 141 R: E 2019), supported by applicants' affidavit.

When the application was called on for hearing, applicant appeared in person, unrepresented while the Respondent had the services of Mr. Faustine Malongo learned advocated who was assisted by Mr. Iman Mfolo, also learned advocate.

Supporting his application, the applicant first prayed to adopt his application and affidavit to form part of his submissions. He added that, the delay to file his notice of appeal was because of illness. He argued that, he was admitted in hospital due difficulties in breathing and on discharge, he found out of the time prescribed for filing an appeal. He, for that reason prayed for the application to be allowed.

In response, Mr. Malongo opposed the application. Like the applicant, he first prayed to adopt his counter affidavit to form part of his submissions.

He submitted that the High court decision was delivered on 26/7/2029 therefore the time to file notice of appeal expired on 25/8/2029. In his medical report attached to the affidavit in support of the application, stated Mr. Malongo, applicant was admitted in hospital from 10/8/2019 to 14/8/2019, and that he was on medical checkup up to 24/10/2019. It was Mr. Malongo's argument that, the medical report is silent on how the checkups interfered with the filing of the Notice of appeal. He was of the view that the time between 15/8/2019 to 24/8/2019 was not accounted for. He relied on the case of **Deus Moris Alexander v Sandvik Mining and Construction (T) LTD**, Revision No. 14 of 2011.

Speaking on the reliance by the applicant on the struck-out application No 113/11/20120 by the court of appeal, Mr. Malongo contended that the said application was filed on 20/11/2019, the time between 14/8/2019 to 19/11/2019 was not accounted for. Again, stated Mr. Malongo, time from 12/8/2020 when the court of appeal struck out the application to 4/9/2020 when this application was filed in court was not accounted for. While submitting that the applicant's affidavit indicated that between 13/8/2020 to 26/8/2020 applicant was sick attending at Mwendakulima Health center, no evidence was tended to prove that proposition. He cited the case of **Dar es**

salaam City Council V. S. Group security Co. LTD Civil Application No. 234 of 2015 and prayed for the dismissal of the application.

In rejoinder, applicant reiterated his submission in chief. he said after having been discharged from hospital he was not fit to file the intended appeal; He therefore urged the court to allow the application.

I have carefully gone through the application, affidavit in support thereof and the party's submissions. The issue is whether the application is meritorious or not.

It is a trite law that in an application for extension of time, the applicant is duty bound to show good cause for delay. According to paragraphs 4, 5 and 7 of his affidavit, applicant delay was due to the applicant's illness and delay in prosecution of civil application No 133/11 of 2020 before the Court of Appeal.

The affidavit discloses that applicant was dissatisfied with a dismissal of Civil Case No. 4 of 2018 on 26th day of July 2019. He, however, felt sick before he could file the intended appeal. Applicant was hospitalized at Mwendakulima health center from 09/08/2019 to 14/08/2019 and went on with checkup visits up to 24/10/2019. A later dated 01/11/2019 from

Kahama Town Council Mwendakulima Health Centre was annexed to the affidavit to that effect. He there after filed an application for extension of time for lodging a notice of appeal to the Court of Appeal of Tanzania (Civil Application No.133/11 of 2020) which was struck out on 12/8/2020 . according to his affidavit, on 13th August,2020 to 26th August, 2020 applicant was again sick suffering from breathing difficulties. He insisted that the delay was out of his control.

Illness is an acceptable ground which if established, justifies the grant of an application for extension of time. The reported illness here covers a period between 10/8/2019 to 24/10/2019 and again from 13/8/2020 to 26/8/2020. The judgement sought to be impugned was delivered on 26/7/2019, so the application misses explanation on what was happening between 27/7/2019 after the delivery of the decision by the High court to 9/8/2019 when the applicant became sick. As rightly stated by Mr. Malongo, in an application for extension of time, each day of the delay must be accounted for. This is the position in the decision of **Deus Morris Alexander** (Supra) at page 7. where Rweyemamu J (as she then was) observed that, the explanation of the delay must cover whole period of the delay.

Applicant had another excuse, he first applied for enlargement of time to file appeal before the court of appeal in Civil application No 133/11/2020 which was however struck out on 12/8/2020. It is in the respondent's counter affidavit that application No 133/11/2020 was filed on 20th November, 2019, so, the period between 20th November, 2019 to the date of striking out Civil Application for application No. 133/11/2020, is also justified as a technical delay which cannot be blamed on the applicant. See for instance the decision in **Kabdeco V. Wetco Limited**, Civil Application No. 526/11 of 2017 (unreported).

Now if the applicant was sick up to 24/10/2019 and filed the struck-out application on 20/11/2019, the period of 26 days from 25/10/2019 to 19/11/2019 ought to have been accounted for. Nothing was said in this application in relations to the above days. Yet again, the application is silent on what was happening from 26/8/2020 when applicant recovered from illness to 4/9/2020 when this application was filed in court. As stated earlier, in an application for enlargement of time, each day of the delay must be accounted for. In **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) it was held that:

"Delay of even a single day, has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."

Having considered the above, I am satisfied that, applicant failed to account for each day of the delay. The application is thus dismissed for being unjustified.

It is accordingly so ordered.

DATED at Shinyanga this 19th day of March 2021.



E.Y. Mkwizu
E.Y. MKWIZU
JUDGE
19/3/2021