

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

AT MTWARA

MISC. CIVIL APPLICATION NO.18 OF 2020

(Arising from PC Civil Appeal No. 14 of 2019 of the High Court of Tanzania
Mtwara. Originating from Probate Case No. 31 of 2018 Primary Court at Mtwara
Urban and Probate Appeal No. 2 of 2018 at the District Court of Mtwara)

ASUMIN MOHAMED MKIWA.....APPLICANT

VERSUS

MZEE ISSA ATHUMANI.....1ST RESPONDENT

ALLY ISMAIL NAMKONO.....2ND RESPONDENT

RULING

2nd March & 8th April, 2021

DYANSOBERA, J.:

The applicant herein is, under section 11 (2) of the Appellate Jurisdiction Act [Cap141 R.E. 2002], seeking an extension of time in which to apply for leave to appeal to the Court of Appeal out of time and that costs be in the main cause. An affidavit of Asumin Mohamed Mkiwa, the applicant, has been filed in support of the application. In resisting the

application, the 1st and 2nd respondents have filed their joint counter affidavit. This application was heard in writing.

The applicant appeared in person and unrepresented while the two respondents were represented by Mr. Rainery Songea who argued the in opposition.

Arguing in support of application, the applicant submitted that he was the appellant in Civil Appeal No. 14 of 2019 where the same was decided in favour of the respondents on 8th May, 20120 by Hon. Ngwembe, J. On 16th March, 2020, the applicant wrote a letter requesting to be supplied with copies of judgment and proceedings but the documents were not collected until on 3rd June, 2020 due to the 'court's convenience'. After receipt of the said documents the applicant filed an application for leave to appeal but the application was struck out on a point of law.

The applicant argues that he started the process of filing an application for leave in time but was stuck. He informs the court that the cause for the delay is beyond his control and was not negligence. He cited the case of **Fortunatus Masha v. William Shija and Another** (1997) TLR (CAT) in support of his argument.

Responding to the submission, Mr. Rainery Songea, learned counsel for the respondents submitted that the applicant's affidavit has not advanced any reason warranting the grant of extension. In his view, the applicant has failed to demonstrate sufficient cause for extending time. Pressing that litigation must come to an end, learned counsel cited the case of **Stephen Massato Wasira v. Joseph Sinde Warioba and the Attorney General** (1999) TLR 334. He maintained that extension of time is purely the discretion of the court and that the discretion can only be exercised upon sufficient reason being shown. Further that all the circumstances must be taken into account before the discretion is exercised which include the length of the delay, reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice that the respondent may suffer if the application is not granted. Counsel further informed this court that other guidelines for extension of time includes the applicant accounting for all the period of delay, the delay should not be inordinate and the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. Reliance was placed various authorities, namely, **Kalunga and Company Advocates Ltd v. National Bank of Commerce Ltd** [2006], TLR 235, **Samwel Sichone v. Bulebe Hamisi**, Civil Application

No. 8 of 2015, **Mbogo v. Shah** [1968] EA , **Mwita Mhere and Ibrahim Mhere v. R** (2005)TLR 107, **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** and lastly, the case of **Keloi madore v. Mepukori Mbelekeni (AR)**, Civil Application No. 13 of 2016 (Unreported).

It is trite rule that an application for extension of time is entirely in the discretion of the court to grant or refuse it. Such discretion must, however, be exercised judiciously and judicially, the overriding consideration being sufficient cause.

What amounts to sufficient cause has not, to date, been established. It all depends on the circumstances of a particular application. This position was cemented by the Court of Appeal in the case of **Abdallah Salanga and Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001 when it observed:-

"No particular reason have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application."

In the present application, the reasons for extension of time can be gathered from paragraphs 6, 7 and 8 of the applicant's affidavit as follows:

6. That on 16th May, 2020 the applicant wrote a letter to be supplied with a copy of judgment and proceedings but unfortunately she collected the same on 3rd June, 2020 due to court's inconveniences....
7. That on 9th day of June, 2020 the applicant filed application for leave to appeal to the Court of Appeal of Tanzania. The respondent raised objection that the said application was filed out of time and it was not attached with order. That, basing on the said preliminary objection the application was struck out with costs on 3.09.2020....
8. That the applicant is still in need to file the said application to seek leave to file appeal in the Court of Appeal but the period for the same has already expired hence this application.

The two respondents under paragraph 5 of the joint counter affidavit noted the contents averred in paragraph 7 of the applicant's affidavit. With respect to paragraphs 8 and 9 of the applicant's affidavit, the respondents argued that no sufficient reason was demonstrated. The applicant has attempted to expound those averments in the written submission.

Being guided by the observation of the Court of Appeal in the case of **Abdallah Salanga** that no particular reason have been set out as standard sufficient reasons, I am in no doubt that the reasons stated by the applicant were beyond his control. It is not dispute that this is a mere application for extension of time which is not a substantive application. Refusing to grant

the extension of time would, in my view, deny the applicant of the opportunity of proving or disproving the relevant case in question and when he could effectively do so and this may amount to a denial of justice. I am fortified in this by the legal position taken by the Court of Appeal in the case of **Minister for Energy and Attorney General and East African Gold Mines Ltd as an Intervenor v. Mobrama Gold Corporation Ltd** [1998] TLR 425 when it stated:-

'It is generally inappropriate to deny a party an extension of time where such denial will stifle his case, as the respondent's delay does not constitute a case of procedural abuse or contemptuous fault and because the applicant will not suffer any prejudice, an extension of time should be granted.

In the present application, the applicant has been diligent in the pursuit of his legal right. He timely applied for copies of judgment and proceedings and filed his first application in time but the fortune was not on his side, the application was struck out on a point of law. He has shown diligence and there is no sloppiness on his part. Justice demands that this application be granted.


For the above reasons, I am satisfied that the applicant has shown sufficient reason for not only the delay but also for the extension of time.

The cases cited by learned counsel for the respondents are distinguishable as they did not set the standard of what amounts to sufficient cause. They are therefore inapplicable in the circumstances of this case.

For the reasons I have stated, I order that the application be granted. Time is extended for the applicant to file an application for leave to appeal to the Court of Appeal. He should file the application within fourteen (14) days from to date.

It is so ordered.




W.P. Dyansobera

Judge

8.4.2021

This ruling is delivered at Mtwara under my hand and the seal of this Court on this 8th day of April, 2021 in the presence of the appellant, the respondent and Mr. Issa Chiputula, learned Counsel for the respondents.




W.P. Dyansobera

Judge