

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. CIVIL APPLICATION NO. 38 OF 2020
EMMANUEL S. STEPHEN APPLICANT
VERSUS
THE TEACHERS SERVICE COMMISSION..1ST RESPONDENT
MBEYA DISTRICT COUNCIL.....2ND RESPONDENT
THE HONOURABLE AG.....3RD RESPONDENT**

RULING

Date of last order: 08.04.2021

Date of Ruling; 14.04.2021

MAMBI, J.

This Ruling emanates from an application filed by referred as the applicant. In his application supported by an Affidavit the applicants filed an application (**MISC. LAND APPLICATION 38 OF 2020**) for an application for an extension of time to file an application for leave to apply for prerogative orders to this court. In his application the applicants has prayed to this court to allow the applicant to file an application for leave out of time. The application is supported by an affidavit where the applicant has stated his reasons for their delay.

During hearing, the applicant appeared under the service of the learned Counsel Mr.Esau, while the respondents were represented by the learned State Attorney Mr Tibaijuka.

The applicant briefly submitted that he is seeking for an order for extension of time to file an application for leave to apply for prerogative orders to this court out of time and the reasons for delay are stated at the affidavit. The learned Counsel for the applicants argued that the applicant have indicated his reasons for the delay under paragraph 8 in his affidavit. He argued that earlier the applicant filed his application which was struck out and this according to him meant that the applicant at first filed his application within time. He argued that earlier the applicant had an advocated who failed to take due diligence before the applicant opted for another advocate. He referred the decision of the Court in **Kambona vs. Elizabeth Charles CAT Dar Application No. 529 of 2019 page 8** where the CAT observed that lack of diligence to the advocate can be the reason for extension. He argued that even degree of prejudice is in the side of the applicant if he will not be granted since this is only the place to get his rights. He referred the decision of the Court in **Registered Trustee Kanisa la Pentekost Mbeya vs. Lamson and others CAT, Mbeya, Civil Application No. 191 of 2019 page 12.**

In response, the respondents' Counsel the learned State Attorney Mr Tibaijuka briefly submitted that the applicant has not indicated any good reasons.. The learned Counsel briefly submitted that the applicant has also not counted for each day for his delay. He argued that extension of time is the

dissertation of the court however, the court must follow the laws. He referred the decision of the Court in **Cosmas F. vs. R. CAT No. 76 of 2019 at page 4 paragraph 1**. He argued that the applicant has failed to accept for each day of delay and no reasons. The learned State Attorney was of the view that the applicant has been negligent in complying with the time. He averred that the applicant has not indicated how the applicant is going to be prejudiced. He referred the decision of the Court in **Registered Trustee DSM vs. Chairman Bunju Village and 4 others, Civil Application No. 147 of 2006 page 9 paragraph one**.

I have considerably perused the application supported by an affidavit. I have also keenly considered the submissions made by both parties to find out whether this application has merit or not. The main issue to be determined is whether the applicant have advanced sufficient reasons for this court to consider his application for an extension of time to file his appeal to the Court of Appeal out of time. In other words, the question to be determined is whether the applicant has properly moved this court in his application and whether there are any good causes for his delay or not. It is trite law that any party seeks for an extension of time to file an appeal or application out of time he is required to advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law with and case studies. In this regard, I wish

to refer the decision of the Court of Appeal of Tanzania in **REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)**. The court in this case observed that;

“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.

This means that in determining an application for extension of time, the court has to determine if the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. This means that the court need to consider an issue as to whether the applicants in their affidavit have disclosed good cause or sufficient reasons for delay. In other words, the court needs to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to shown such reasons were operated for all the period of delay.

Reference can also be made to the decision of the court in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 Court of Appeal of Tanzania at Dar es Salaam (Unreported) underscored that;

“Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

(a) The length of the delay

(b) The reason of the delay – whether the delay was caused or contributed by the dilatory conduct of the applicant?

(c) Whether case such as whether there is a point of law or the illegality or otherwise of the decision sought to be challenged.”

Worth also at this juncture referring the decision of the court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015** (Unreported) where it was held that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause...”

Looking at the application before this court, the applicant in his affidavit has clearly indicated that he had sufficient reasons for their delay. It is clear from the affidavit and other records that the applicant had earlier filed his first application in time but it was struck out for being incompetent. It also on the records that earlier the applicant had an advocated who did not take any due diligent before the applicant opted for another advocate. In my view, these were good causes and sufficient reasons for his delay taking into account the circumstance of the matter at hand. My perusal on the applicant’s documents including her affidavit (para 8 and 9) has revealed that the applicant has indicated reasonable or sufficient cause to enable this court to consider and grant his application. Indeed, the question as to what it amounts to “sufficient cause” was underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA**

CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007,

where the court observed the following:-

*“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**”(emphasis supplied).*

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

“What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant”.

Reference can also be made to the decision of Court of Appeal in **MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998** in which the court at **Page 425** held that

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

I agree with the applicant that he has advanced and presented

sufficient reasons for delay and the extent of such delay in her application. I also wish to refer the Law of Limitation Act. It should also be noted that granting an application for an extension of time is the discretion of the court depending on the circumstances of the case. The relevant provision is section 14 (1) of the Law of Limitation Act Cap.89 [R.E. 2019] which provides as follows:-

*“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 such 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 (emphasis mine)”.*

I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to file his application for leave as prayed out of time. This means that the applicant has to file his application to this court if he wishes to do so.


The applicant shall file his application within 14 days from the date of this ruling.




A. J. MAMBI
JUDGE
14.04. 2021

Ruling delivered in Chambers this 14^h day of April 2021 in presence of both parties.




A. J. MAMBI
JUDGE
14.04. 2021

Right of appeal explained.


A. J. MAMBI
JUDGE
14.04. 2021