

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. CIVIL APPLICATION NO. 10 OF 2021

RORYA DISTRICT COUNCIL APPLICANT

VERSUS

1. SAMSON ALIWA

(As Guardian of Debora Samson) 1ST RESPONDENT

2. NESTORY KANDO (As Administrator of

the Estate of the late Owese Olando) 2ND RESPONDENT

3. STEPHENE O. KAGOSE

(As the Guardian of Bilishan Kagose) 3RD RESPONDENT

4. INSAYANSI A. WAMBOGO

(As the Guardian of Rose Wambogo) 4TH RESPONDENT

***(Application for extension of time to lodge an appeal from the
Judgment of the Resident Magistrate's Court of Musoma
at Musoma in Civil Case No. 7 of 2017)***

RULING

27th April and 17th May 2021

KISANYA, J.:

This is an application for extension of time to appeal. The decision subject to this application was delivered by the Resident Magistrate's Court of Musoma at Musoma in Civil Case No. 07 of 2017 on 30.04.2020.

The applicant had appealed in time to challenge the said decision. However, her appeal was struck out on 03.12.2020 for being incompetent

due to defects in the judgment and decree appended to the petition of appeal. In the interest of justice, the applicant was granted leave to file a fresh appeal within 20 days from the date of receiving the correct copies of judgment and decree but not later than 60 days from 03.12.2020. Upon failing to lodge the fresh appeal-within the said time, the applicant has filed the present application which is made under section 14 (1) of the Law of Limitation Act [Cap. 89, R.E. 2019] and section 95 of the Civil Procedure Code [Cap. 33, R.E. 2019].

The applicants' counsel, Mr. Paxton J. Marwa took an affidavit in support of the application and adopted the same on the date of hearing. On the other side, the respondents' counsel Mr. Christopher Waikama filed an affidavit in reply to contest the application. He also prayed to adopt the said affidavit in reply when the matter came up for hearing.

Submitting in support of the application, Mr. Marwa reiterated what had been deposed in his affidavit. He pointed out that despite of consulting the trial court several times, the correct copies of judgment and decree were made available on 29.01.2021 and collected on 02.02.2021. The learned State Attorney went on to contend that he had fallen sick after receiving the copies of judgment and decree and filed the

present application on 15.02.2021 when his health was good. Believing that the delay was caused by the reasons outside his control, Mr. Marwa urged me to allow the application.

In his reply submission, Mr. Waikama did not dispute that the copies of judgment and decree were collected on 02.02.2021. He argued that the applicant had not adduced evidence as to sickness from 03.02.2021 up to the time when the present application was filed in the Court. Therefore, he asked me to dismiss the applicant on the reason that the applicant had not accounted for the 14 days of delay.

In terms of section 14 (1) of the Law of Limitation Act (supra), this Court has the discretion to grant the prayer upon being satisfied that the applicant has advanced "reasonable or sufficient cause" for the delay. There is no definition of what amounts to reasonable or sufficient cause. In exercising its jurisdiction section 14(1) of the Law of Limitation, the Court is guided by factors established by case law. These include, the length of the delay, whether or not the said delay has been explained away, diligence on the part of the applicant and whether there is an illegality in the impugned decision to mention but a few. See the case of **Lyamuya Construction Company Limited vs. Board of Registered**

Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported) where the above stated factors were deliberated at length by the Court of Appeal. The law is also settled that technical delay is a sufficient cause for extension of time. See for instance, **Hamisi Mohamed (as the Administrator of the Estates of the Late Risaid Ngawe vs Mtumwa Moshi (as the Administrator of the Estates of the Late Moshi Abdallah),** Civil Application No. 407/17 of 2019 (unreported)

In our case, following this Court's ruling dated 3rd December, 2020, the applicant ought to have lodged a fresh appeal on or before 30.01.2021. It is common ground that, the filing of fresh appeal was subject to availability of the correct copies of judgment and decree. Both parties do not dispute further that it was on Friday of 29th January, 2021 when the applicant was informed to collect the copy of judgment and decree. Last, it is not disputed that the applicant collected the required copy on 02.02.2021, when the time to appeal had already expired.

Pursuant to paragraph 8 of the affidavit in support of the application, the applicant's counsel had fallen sick, he was suffering from a severe flue (coughing) for one week from 03.02.2021. It is trite law

that sickness is sufficient cause which is beyond human control. See **Alasai Josia (suing by his Attorney Osca Sawuka vs Lotus Valley Limited)**, Civil Application No. 498/12 of 2019, CAT at Dar es Salaam (unreported). As rightly argued by Mr. Waikama, sickness is proved by medical evidence. In this case, medical evidence to prove sickness is wanting. Therefore, I will not consider it.

I will just take a look at the length of the delay. In view of what was deposed in the affidavit, the applicant delayed for 15 days because the present application was filed on 15.02.2021. That was 13 days after receiving the copies of judgment and decree which are required to accompany the petition of appeal. Now, in terms of paragraph 21, Part II of the Schedule to the Law of Limitation Act, the time within which to lodge appeal subject to this application is 90 days. However, the time taken to obtain the copies of judgment and decree are excluded. This is pursuant to section 19(2) of the Law of Limitation Act. Although this Court ordered the applicant to lodge fresh appeal within 20 days from the date of receiving the correct decree and judgment but not later than 60 days from 03.12.2020, I find that the applicant's counsel was diligent to take the necessary step. In the circumstances, the period of the delay being only 13 days, the justice of this case is in favour of granting the

application. Thus, the period of delay is not inordinate.

Consequently, extension of time is hereby granted. It is ordered that the intended appeal to be filed within thirty (30) days of the delivery of this ruling. Ordered accordingly.



DATED at MUSOMA this 17th May, 2021.

E. S. Kisanya
JUDGE

Order: Ruling to be delivered by the Deputy Registrar

E.S. Kisanya.
JUDGE
17/05/2021

Court: Ruling delivered this 17th day of May, 2021 in the presence of the 1st, 2nd and 4th respondents and in the absence of the applicant.

M.A. Moyo
Deputy Registrar
17/05/2021