

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

MISC. CIVIL APPLICATION NO. 405 OF 2019
(Originating from Misc. Civil Application No. 670 of 2018)

**TERRESTRIAL TANZANIA LIMITEDAPPELLANT
VERSUS
ZAMBIA RAILWAY AUTHORITY.....RESPONDENT**

RULING

Date of Last Order 27/4/2021
Date of Ruling: 25/5/2021

MASABO, J.;

The applicant has moved this court for leave of extension of time within which to file a memorandum for review. Supporting the Application is an affidavit deposed by one Alex Anael Leole, who is identified as the managing director for the applicant. In this affidavit, it is deposed that in 2018, the applicant applied for extension of time within which to appeal. His application ended barren as it was dismissed on 20th June 2019 for want of a good cause. Believing that the application was wrongly dismissed, she resorted to move the court to review its ruling. However, he was prevented from filing the memorandum for review by the delay in being furnished with the copy of the ruling. In paragraph 7 of the affidavit, it has been deposed that, the applicant was furnished with the ruling on 26th July 2019 after the time within which to apply for review had lapsed and on 9th August, 2019, he filed this

application. Contending the application, the respondents filed a counter affidavit on 4th September, 2019. Thereafter, she consistently defaulted appearance hence an *ex parte* hearing against her.

In the hearing which proceeded in writing, Mr. Job Kerario, counsel for the applicant, having adopted the contents of the affidavit proceeded to argue that section 14(1) (b) of the law of Limitation's Act [Cap 89 RE 2019] vests in this court discretionary powers to extend the time within which to file an appeal or application upon the applicant demonstrating a good chance. The ruling of the Court of Appeal in **The Attorney General v Twiga Paper products Limited**, Civil Application No. 108 of 2008 (unreported) was cited in fortification of the point and it was submitted further that the facts adduced in paragraph 7 of the affidavit have demonstrated a good cause meriting the enlargement of time. Further reliance was placed on **Mary Kimaro v Khalfan Mohamed** [1995] TLR 202 in which it was decided that, delay in being furnished with the judgment and proceedings constitute a good cause. It was further submitted that the intended review stands a good chance for success as in dismissing the application for extension of time, the court overlook a material fact.

The law on extension of time is fairly settled. Section 14 (1) of the Law of limitations Act [Supra] under which the instant application has been lodged, has been interpreted in a plethora of authorities which include, among others, the two cases cited by Mr. Kerario. As he has correctly submitted, section 14(1) of the Law of Limitations Act clothes this court with

discretionary powers to enlarge the time to allow a litigant to appeal or file an application out of time if it is demonstrated to the satisfaction of the court that the applicant's failure to file the appeal or application on time was due to a good cause which is determined by looking at such factors as the lengthy of delay, the reasons of the delay, degree of prejudices to the respondent if the application is granted and chances of success of the intended appeal or application (**The Attorney General v Twiga Paper products Limited** (supra). Accordingly, the burden rests on the applicant to account for the delay and to prove to the satisfaction of the court that the delay was occasioned by reasons other than his own negligence, sloppiness or apathy in pursuit of right.

In the instant case, having considered the affidavit and the submission made in favor of the application, I am of the firm view that the reasons deponed in paragraph 7 of the affidavit constitute a good cause meriting the extension of time. Through "Annexure D" collectively, to the affidavit, she has ably demonstrated that after the ruling was delivered, she did not go to sleep. On 21st June 2019, is applied to be furnished with the ruling and drawn order but the same were not availed to him and on 3rd July, 2019, he wrote another reminder. Under the circumstances, I find no justification to condemn the applicant for the delay which was wholly occasioned by the court. As held in **Mary Kimaro v Khalfan Mohamed** (supra), the judgment and proceedings are essential for framing a sound memorandum of appeal. Similarly, in this case, the applicant could not frame a sound memorandum for review in the absence of the ruling.

In the foregoing, I allow the application. The Applicant is to lodge his memorandum for review within 14 days. Since the court is solely to blame for the delay, I will refrain from marking any order as to costs.

DATED at DAR ES SALAAM this 25th day of May 2021.



A handwritten signature in blue ink, appearing to be "J.L. MASABO".

J.L. MASABO

JUDGE