

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO 49 OF 2020

(Arising from the decision of the High Court of the United Republic of Tanzania (Main Registry) at Dar es Salaam dated 31st August, 2020, before Hon. Justices Feleshi J.K, Masoud J, and Luvanda J, in Miscellaneous Civil Cause No. 30 of 2018)

RASHID AHMED KILINDO..... APPLICANT

VERSUS

THE HONOURABLE ATTORNEY GENERAL.....RESPONDENT

RULING

Date of Last Order: 15/04/2021

Date of Ruling: 08/06/2021

MLYAMBINA, J.

This is an application for extension of time to file Notice of Appeal against the decision of the High Court of Tanzania (Main Registry) at Dar es Salaam (Hon Justices Feleshi J.K, Masoud J, and Luvanda J,) dated 31st August, 2020 in *Miscellaneous Civil Cause No. 30 of 2018*). The application was brought by way of Chamber summons made under *Section 11(1) of the Appellate Jurisdiction Act, Cap 141 (R.E 2019)* supported by the sworn affidavit of Loveness Denis, Counsel for the Applicant. The Respondent resisted the Application by filing the counter affidavit sworn by Daniel Nyakiha, State Attorney employed by the Office of the Solicitor General.

Briefly from the material gathered in the supporting affidavit, the Applicant on 20th December, 2018 lodged a Constitutional Petition challenging several provisions of *Prevention of Terrorism Act, 2002 [Act No. 21 of 2002]*. On 31st August, 2020 the High Court dismissed the Applicant's case. Aggrieved by the decision, on 29th September, 2020 the Applicant instructed his Counsel to institute an appeal to the Court of Appeal in which they immediately prepared a Notice of Appeal and lodged a letter to the Registrar requesting for certified copies of Judgment, Decree and Proceeding of the case.

The Applicants' Counsel further averred that; on 30th September, 2020 at 13:43 hours, uploaded a Notice of Appeal to the Judicial Statistics Dashboard System (JSDS) which was pending for admission until 1st October, 2020 around 07:54. Thereafter, he made due diligence by visiting Registrar physically. However, it was not successful since the Registrar had administrative meetings. It was until 16:30 when the Registrar was back and instructed her to wait for the admission status on the Judicial Statistics Dashboard (JSDS). The Applicant's Counsel contends that, on 1st October, 2020 the uploaded Notice of Appeal was admitted around 07:54 which was out of time and thereafter made follow-ups to the Registrar for assessment of filing fee. Unfortunately, the Registrar

was not around until 15:30 but the Accountant office was already closed. On these sequences of events the present application for extension of time was preferred and the same was lodged on 2nd October, 2020. The main reason being that the delay to file Notice of Appeal was due to administrative reasons and not personal reasons.

When the application came for hearing on 3rd March, 2021, the Applicant was represented by learned Counsel Loveness Denis while the Respondent was represented by Daniel Nyakiha, State Attorney. By a consensus of both parties, the application was agreed to be disposed by way of written submission.

In support of the application, it was submitted by the Applicants' Counsel that the Notice of Appeal was through Electronic filing. Expounding to the provision of *Rule 3 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018* she contends that, electronic filing is made by submission of documents through the electronic filing system and under *Rule 21* of the same *Act*, a document is deemed to be filed upon the date of its submission. It was her further submission that at the time the Notice of Appeal was uploaded i.e. on 30th September, 2020 at 13:43 hours the same

was done within the prescribed time of 30 days which is 29th day from the date of pronouncement of the Judgment.

It was further submitted that in an attempt to retrieve the uploaded Notice of Appeal from the Judicial Statistics Dashboard (JSDS) purposely for printing and attaching the same to the present application, the records of it were not found. In the said circumstances, no evidential proof could be produced to ascertain the above assertion. On the reasons thereof, she holds view that, the delay in filling Notice of Appeal was a result of the Registry of the Court.

In attempts of remedying the situation, the Applicant submitted on how she took due diligence by visiting the office of Registrar on the 31st August, 2020 immediately after uploading the Notice of Appeal and unfortunately the latter was attending Administrative meeting which hindered her to attend the matter on time. To cement her argument, she cited the case of **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed** Civil Application No 89/2018 where it was held that:

I am of the considered opinion that the Applicant has been diligent in pursuing his right; a point of being diligent is another factor which can lead the Court

exercise its discretion to grant extension of time. However, this will depend upon the circumstance of each case.

In response, learned State Attorney Daniel Nyakiha cited different authorities bearing various principles in explanation of application of this nature. *One*, the application of extension of time is entirely discretion of the Court. *Two*, the Applicant is required by law to account for every day of delay. *Three*, the Applicant should show that he has sufficient reasons.

According to the Respondent, the Applicants' allegation that the delay was administrative and not on her part is not supported by evidence of an extract from the Judicial Statistics Dashboard (JSD). Worse enough, the Applicant has misled this Court by saying that this application for extension of time was filed on 2nd October, 2020 whilst the same was presented for filing on 6th October, 2020. He reiterated that the prescribed period of thirty days to file Notice of Appeal must be strictly respected and construed.

In rejoinder, the Applicants' Counsel reiterated her submission in chief but added that the application was admitted on 2nd October, 2020. However, payment of the same could not be effected on the same day for the reasons beyond their control. She further

contended that on 3rd and 4th October was weekend so it was until 6th October, 2020 when the application was filed and fees paid on the same date.

Having considered the affidavit, counter affidavit and submissions for and against this application, I find that the pertinent issue is; *whether the Applicant has given good cause for the grant of extension of time to file Notice of appeal.*

Gleaned from the contents of the affidavit and counter affidavit of the respective Counsel for the parties and their submissions thereto; it is undisputable facts that the impugned decision was delivered on 31st August, 2020. Therefore, the Notice of Appeal in respect of such impugned decision was to be lodged not later than 30th September, 2020.

Reflecting on the Applicant's affidavit, the intended Notice of Appeal was filed on 30th September, 2020 through JSDS which was on the 30th day and that the same was within time. Unfortunately, it remained pending for admission until 1st October, 2020. Thus, she made physical follow-ups but the same was fruitless. It has to be noted, however, the Powers of this Court to grant extension of time emanates from *Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 (R.E 2019)* which provides:

Subject to subsection (2), the High Court or, where an appeal lies from a subordinate Court exercising extended powers, the subordinate Court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate Court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

Imploring the above provision in the present application, it is correct that this Court has discretionary powers in extending time to lodge Notice of Appeal. This position is also reflected in **MEIS Industries LTD and 2 Others v. Twiga Bank Corp**; Misc. Commercial Cause No. 243 of 2015 (unreported) where it was held:

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.

In exercising this discretionary power, there must be sufficient cause for delay. There are a number of authorities which acknowledge such position. In the case of **Regional Manager, Tanroads Kagera v. Ruaha concrete Company Ltd**, Civil Application No 96 of 2007, Court of Appeal of Tanzania at Tanga (unreported) it was held that:

The test for determining an application for extension of time, is whether the Applicant has established some materials amounting sufficient cause or good cause as to why the sought application is to be granted.

Nevertheless, there are no hard or fast rules on what constitutes a sufficient or good cause but will depend on the circumstances of each case. In **the International Airline of the United Arab Emirates v. Nassorror**, Civil Application No 263 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported) it was held:

In order for the Court to establish whether there was a good cause or sufficient reason, depends on whether the application for extension has been brought promptly as well as whether there was diligence on the part of the Applicant.

Further, it was stated in the case of **CRDB (1996) Limited v. George Kilindu**, Civil Appeal No 162 of 2006 Court of Appeal of Tanzania (unreported) that;

sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.

In the present case, looking at the Applicant averments, the Notice of Appeal was made through e- filing, but it failed because it was pending for admission until 1st October, 2020. In view of the Applicant, the delay was made by administrative reasons and not personal reasons.

Before I proceed, I find it relevant to have a brief excursion of the law providing for electronic filling of the documents in Court. The electronic filing system is recognized by our laws as among the means of filing documents in Court. It is governed by the *Judicature and Application of Laws (Electronic Filing) Rules, 2018, G.N. No. 148 of 2018. Rule 21(1) of G.N. No. 148 of 2018*, which provides that:

A document shall be considered to have been filed if it is submitted through the electronic filing

system before midnight, east African time, *on the date it is submitted*, unless specific time is set by the Court or it is rejected.” [Emphasis supplied]

From the above cited rule, filing of the document electronically is recognized by our laws as one of the means of filing a document in Court. The document which has been filed through electronic filing system is considered to be filed in Court on the date it was submitted. Furthermore, it is a practice that after the document is lodged online the party has to file the *hard copy too*. This was illustrated in the case of **Mohamed Hashil v. national microfinance Ltd (NMB Bank)**, Revision No 106 of 2020 (unreported).

In the case at hand, the evidence on record shows that the Notice of Appeal was filed electronically on 30th September, 2020 at 13:54 hrs, which was within time. However, there is no proof to the extent that she filed the Notice of Appeal through e-filing. There is also no evidence that the Applicant filed a hard copy after she filed the Notice of Appeal through e-filing.

The main contention of the Applicant is that, when she looked in the Judicial Statistics Dashboard (JSDS) for purpose of printing and attaching it to the present application, the records of the said

Notice of Appeal was removed from the admitted cases column and no record appeared at all. In substantiating such assertion, the Applicant alleged that she made physical follow up to the Registrar's office. I find the Applicant's contention lacks weight. The application is barren of the affidavit supporting such claim. I hold same view with that of the Respondent's Counsel that there is no sufficient proof or evidence to the Applicant's contention.

Approaching the Application at hand, the Applicant Counsel avers that, after discovered she was out of time, she acted promptly by filling this application of which it was admitted on 2nd October, 2020. However, payment of the same could not be effected on the same day for the reasons beyond their control. So, it was until 6th October, 2020 when the application was filed and fees paid on the same date.

As illustrated in different cases including the case of **Tanzania Coffee Board v. Rombo Millers Ltd, Civil Application No. 13 of 2015** (unreported), Court of Appeal of Tanzania; each day of delay must be accounted, the reasons for delay must be sufficient, and the Applicant should prove that he acted diligently. In the present case, the Applicant failed to account for the delay on 2nd, and 5th October. The reasons that the application for extension of

time was filed on 2nd October, 2020, but payment of the same could not be effected on the same day for the reasons beyond their control lacks proof. Further, the Applicants' Counsel failed to account for the day of 5th October, 2020.

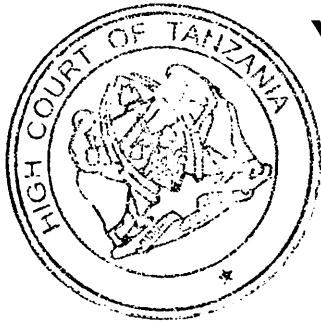
Apparently, the Applicant's Counsel is throwing her claims to the Courts administration without proof. At least the Applicant could have filed an affidavit of the Registrar to prove that he did the same but no affidavit was filed to that effect. As such, the Applicant's averment remains a hear say. In the case of **Narcis Nestory v. Geita Gold Mining Ltd**, Misc. Labour Application No. 13 of 2020 High Court of Tanzania at Mwanza (unreported) the Court observed:

If an affidavit mentions another person, that other person has to swear an affidavit. However, I would add that, is so where information of that other person is material evidence because without the other affidavit it would be hearsay.

Thus, in absence of the Registrar's affidavit, this Court cannot exercise its discretionary powers to grant the extension of time to lodge Notice of Appeal out of time.

In the upshot, this application is hereby marked dismissed with costs for lack of sufficient cause.

It is so ordered.



Y. J. MLYAMBINA

JUDGE

08/06/2021

Ruling delivered and dated 8th June, 2021 in the presence of learned Counsel Loveness Denis for the Applicant and Nalindwa Sekimanga, State Attorney for the Respondent.



Y. J. MLYAMBINA

JUDGE

08/06/2021