

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 589 OF 2019

(Originating from the Employment Cause No. 1 of 2018 of the District Court of Ilala at Kinyerezi – Samora Avenue)

Shukuru Rashid Ngwelenje..... APPLICANT

VERSUS

1. Riki Abdallah
2. Hemed Huwel
3. African Trophy Hunting LtdRESPONDENTS

RULING

Date of last order: 08.06.2021

Date of Ruling: 11.06. 2021

EBRAHIM, J:

Shukuru Rashid Ngwelenje has lodged the instant application seeking for extension of time to file an appeal out of time. The application has been brought under the provisions of **section 14(1) of the Law of Limitation Act, CAP 89 RE 2019, Section 93 and Section 95 of the Civil Procedure Code CAP 33 RE 2019.**

The application proceeded ex-parte following the fact that the affidavit of the court process server sworn on 04.02.2020 revealed that both the 1st and 2nd respondents were accordingly served with summons but neglected to honour the same. The 3rd Respondent is the Company operated by the 2nd Respondent.

When the application came for hearing, the applicant who appeared in person unrepresented, prayed to adopt his affidavit to form part of his submission. He explained the reason for the delay being that he was seeking legal help.

It is trite law that the court may for a reasonable or sufficient cause advanced by the applicant grant leave for extension of time for institution of an application or appeal. (See the case of ***Benedict Mumello vs. Bank of Tanzania (2006) 1 EA 227 (CAT)*** and the case of ***Lyamuya Construction Company Ltd vs. Registered Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)***). In both cases it was stressed that an application for extension of time is entirely in the discretion of the court to grant or refuse it; and that the same may be granted only where sufficient reasons for the delay have been established.

Going by the affidavit of the Applicant, his **Employment Cause No. 1 of 2018 instituted at the District Court of Ilala** claiming compensation following an accident he suffered on 17th July 2011 at Kilombero was dismissed on the basis of jurisdiction on 10.04.2019. He thus unsuccessfully directed his claim to the Director General of Workers Compensation Fund (WCF). Not

knowing what to do, on 30.05.2019, he wrote a letter of complaint to the office of the President of the United Republic of Tanzania where he received a reply in August 2019. He then attempted to file an application for review which was rejected. It was then he sought legal assistance of which led him to seek for a judgement and decree of Employment Cause No. 1 of 2018. He was served with the same on 2nd October 2019, hence the instant application which was admitted in court on 28.10.2019.

The Applicant has averred at para 11 of his affidavit that he has been diligent to take a step immediately after the delivery of the ruling of the District Court which shows diligence in pursuing his rights. I agree to this fact.

Certainly, the Applicant has shown in his affidavit the efforts he exerted in pursuing his rights and at all times he has acted promptly. It is a clear case that the delay was not out of negligence, disinterest or lack of diligence – see the case of **(Aluminium Africa Ltd V Adil Abdallah Dhyebi and others, Application No. 6 of 1990 (Unreported))**.

The above notwithstanding, there are instances where extension of time can be allowed depending on the overall circumstances

surrounding the case. Court of Appeal has in many occasions decided that each case should be looked at its own facts, merit and circumstances. In the case of **CITIBANK (Tanzania) Ltd V TTCL, TRA & Others**, Civil Application No 97 of 2003(unreported) the Court of Appeal referred to an English case of **Property & Revisionary Investment Corporation Ltd V Temper & Another [1978] 2 All E.R. 433** where special circumstances were considered in allowing the applicant to file an appeal out of time.

From the above background, I associate myself fully with the cited jurisprudential cases above and find that the delay was not occasioned by negligence, disinterest or lack of diligence by the applicant. I allow the application and avail the Applicant **thirty (30) days** from the date of being availed with a copy of this ruling to file the intended appeal. I give no order as to costs.

Accordingly ordered




R.A. Ebrahim

Judge

Dar Es Salaam

11.06.2021