

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

**MISC CIVIL APPLICATION NO.185 OF 2020**

**JUMA OMARY MSHAMU.....APPLICANT**

**VERSUS**

**AIRPORT TAX CO-PERATIVE**

**SOCIETY LTD(ATACOS).....1<sup>st</sup> RESPONDENT**

**KASSIMU SALUM.....2<sup>nd</sup> RESPONDENT**

**YONO AUCTION MART**

**& COMPANY LIMITED.....3<sup>rd</sup> RESPONDENT**

(From the decision of the District Court of Kinondoni)

**(Swai- Esq, RM)**

Dated 29<sup>th</sup> November 2019

in

CIVIL REVISION No. 31 of 2019

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**RULING**

12<sup>th</sup> April & 12<sup>th</sup> July 2021

**Rwizile, J**

By chamber application supported by an affidavit of Juma Omary Mshamu, this application was filed. It is preferred under section 93, 95 of the Civil Procedure Code [Cap 33 R.E 2019] and section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019].

The applicant is praying for;

- 1. That may this court be pleased to enlarge time for the applicant to file appeal out of time*
- 2. Costs of this application be provided for*
- 3. Any other relief(s) that this honourable Court deems fit to grant*

In the affidavit sworn by the applicant, he averred that, he had financial constraints due to the fact that he is just a driver and single bread earner who had to pay for school fees of his children, hence, he was unable to engage an advocate and file the appeal in time.

At the hearing, the applicant was represented by Ms Enid Makame learned advocate, while the respondents were not represented. It was agreed by the parties that the case should be argued by written submission. It has to be noted that, the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed their counter affidavit. The 3<sup>rd</sup> respondent did not and as well, the 2<sup>nd</sup> respondent, even though he filed the counter affidavit but did not file written submission as directed. Therefore, this application was heard *ex parte* against them.

Supporting the application, applicant argued that, his delay to file appeal within prescribed time was due to financial instability. He said, he managed to engage an advocate on 26<sup>th</sup> March 2020 only to realise he was out of time to file the appeal.

Learned advocate asserted that, under the provisions of section 14(1) of Cap 89 R.E 2019 and section 93 and 95 of the Civil Procedure Code, the court is enjoined to extent time upon reasonable and sufficient cause, although, the same is granted under discretionary powers of the court.

To support her argument, he cited the case of **Selina Chibago vs Finihas Chibago**, Civil Application No. 182 of 2000 at page 6 (unreported). In which it was stated, sufficient cause depends on the particular circumstances of each application.

It was her argument that, the applicant's delay was never meant to abuse the law or the court process, rather, it was beyond the applicant's control. He supported the same with the case of **Mobrama Gold Corporation Ltd vs Minister for Energy and Minerals and the Attorney General and East Africa Goldmines Ltd as Intervenor**, [1998] TLR 425 and cited Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977. He therefore prayed for this application to be granted.

Opposing the application, the 1<sup>st</sup> respondent argued that, granting of extension of time is a discretionary power of the court, which has to be exercised upon sufficient cause shown by the applicant. This position according to him, was stated in the cases of **Michael Lessani Kweka vs John Eliafye** [1997] TLR 152, **Umoja Garage Vs National Bank of Commerce** [1997] TLR 109, where the court dismissed the application for extension of time because no sufficient cause was shown by the applicant.

He submitted further that, for this application to be granted, there are factors to be considered. He said, the length of the delay, the reason thereof, whether there is arguable case and the degree of prejudice to the respondent if the same is granted. He added, this application met neither of the same. He also relied on the case of **Dr. Ally Shabhay vs Tanga Bhora Jamaat**, [1997] TLR 305.

It was his submission that, the applicant’s reason for delay is financial instability, which was unsubstantiated. It was argued that an applicant did not change his mode of life from being a driver. He also said, his delay was caused by his negligence by failure to act diligently. He added that, applicant delayed for 108 days which he did not account for, as stated in the case of **Kalunga and Company Advocate vs National Bank of Commerce Ltd** [2006] TLR 235.

Moreover, he argued that, the appeal which the applicant seeks extension of time, does not have any chance of success. He said, it is the applicant’s intention to abuse the court process and resources. It was his prayer that, since the applicant failed to account for each day of delay, the application be dismissed with costs.

Having considered the contending submission of the parties, the issue to be determined is whether the applicant has shown sufficient reason for delay. It is the law that prescribes for the time to appeal to this court from the District Court as 30 days. The same is provided under section 25(1)(b) of the Magistrates’ Court Act, Cap 11 R.E 2019 which provides *inter alia* that;

*25.-(1) Save as hereinafter provided-*

*(a) .....; or*

*(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for*

*filing an appeal either before or after such period of thirty days has expired.*

However, section 14(1) of the Law of Limitation Act [Cap 89, R. E 2019] provides for extension of time upon sufficient cause. For ease reference the same provides that;

*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 the 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.*

In principle the reasons to grant or reject an application of this nature among many others, is in the absolute discretion of the court. To hold so, I am fortified by the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, where the Court of Appeal of Tanzania held inter alia that:

*"...It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse, extension of time may only be granted where it has sufficiently established that the delay was with sufficient cause..."*

From the foregoing, the question to be asked would be, did the applicant show sufficient cause. Answering the same, I am guided with the principles enunciated in the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women**

**Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), that; *the delay should not be inordinate, the Applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and if the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.* If that is shown, the court cannot hesitate to extent time.

Coming to this case at hand, the ruling which the applicant is seeking to appeal against, was delivered on 29<sup>th</sup> November 2019, and this application was filed on 16<sup>th</sup> April 2020, after 5 months. His reason being, the financial instability he faced during the said time. I then asked myself if financial instability amount to sufficient cause. My sincere answer would be in negative. Reference is made to the case of **Constantine Victor John vs Muhimbili National Hospital**, Civil Application No.214/18 of 2020 at page 12 when the Court of Appeal held that;

*"As observed in Yusufu Same (supra) in the excerpt reproduced above, financial constraints may not be a sufficient ground for extension of time. However, as observed in the same excerpt, there are exceptional circumstances when it can be sufficient....."*

From the foregoing, it is my considered view that those exceptional circumstances mentioned in the case above depend on particulars of each case. I do not think, it is the case here. With due respect, I think the applicant ought to have at least proved such peculiar hardship that led to this inordinate delay. Doing that, would be showing diligence.

I would therefore agree with the respondent that he failed to account for the reasons he advanced. I see no merit in this application, it is hereby dismissed with costs.

**AK. Rwizile**  
**Judge**  
**12.07. 2021**

 Recoverable Signature

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Signed by: A.K.RWIZILE

