

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

MISC. CIVIL APPLICATION NO. 122 OF 2020

SARAH RICHARD HAMZA APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK PLC RESPONDENT

RULING

16th June, & 22nd July, 2021

ISMAIL, J.

This application represents the applicant's quest for extension of time to file an application for leave to appeal to the Court of Appeal. The decision sought to be impugned emanates from Civil Appeal No. of 2020, in which the applicant, who featured as the respondent, lost. Feeling discontented, the applicant filed the notice of her intention to appeal to the Court of Appeal. She, however, missed out on the time prescription for filing the application for leave. Supporting the application is the applicant's own affidavit in which

grounds for the prayers sought are stated in paragraphs 4, 5 and 6. Briefly, the applicant's contention is that, while the application for leave was filed through the e-filing system, a technical error in the system caused a rejection of the application. The error was that it indicated that payment of the application had been exempted, it being a labour matter, while the truth is that the same was eligible for payment of fees. It was subsequent thereto, that the applicant was advised to file the instant application because time for preferring the application for leave had elapsed.

The respondent has vigorously opposed the application. Through a counter-affidavit sworn by its principal officer, the talk of a systems error has been disputed. The respondent averred that since the applicant couldn't lodge the application on 24th September, 2020, then filing it subsequent to that date would obviously render the application time barred because the impugned decision was delivered on 25th August, 2020. The respondent contended that no evidence had been adduced to prove that he received any advice from the Registrar. He concluded by submitting that the applicant had not demonstrated sufficient cause for the delay, possibility of success, or diligence in pursuing the matter.

Disposal of the application took the form of written submissions. The applicant's sole reason for the delay is the technical error that marred the Court's e-filing system. She contended that she came to the Court on 23rd September, 2020, where a Ms. Evodia informed her that filing of documents had been digitized, meaning that filings are done through the Judiciary Statistical Dashboard System (JSDS). She was further advised to enlist the assistance of a lawyer through whom such filing would be done. The applicant contended that on 24th September, 2020, an attempt was made to file the application but power went off before she submitted it for admission, resuming at night when offices had closed. The applicant further contended that her efforts to file the application on 25th September, 2020, fell through, thanks to the system failure. This left the application pending for a few days until 30th September, 2020, when she learnt that the application had been marked by the Registrar of the Court as "Invalid exemption". It was at this point that she sought the Registrar's indulgence on a way forward. The latter advised her to re-file the application.

It was the applicant's further argument that the attempted filing of the application would, if successful, have enabled the applicant to file the application within the statutory time prescription of 30 days. She argued that

the delay was caused by a technical error over which he had no control or knowledge of its existence. She argued that the newness of the system posed a challenge to its users who were not trained to handle it. The applicant urged the Court to consider the application positively, based on the fact that the delay was not caused by negligence. She argued that granting of the application will enable her get an opportunity to be heard on the merit of the matter before a decision is made.

The respondent's opposition to the application was premised on two grounds. One, failure to adduce sufficient cause for the grant. On this, the respondent's contention is that, when the application was submitted for filing on 25th September, 2020, thirty days within which leave was to be sought had already elapsed. This rendered the application time barred before it was actually presented for filing. On the applicant's alleged follow ups subsequent to the failed attempt, the respondent made reference to rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 which provides that an application shall be deemed to have been electronically filed if it is submitted through the system before midnight on the date it is submitted, unless it is rejected. It was the respondent's contention that rejection of the application was as good as it was never filed. The newness

of the system and lack of exposure of the users has been discounted as unfounded, since rule 24 (2) explicitly provides that problems on the user's end do not constitute a sufficient cause for an untimely filing. He argued that Mr. Demetrius Mtete who lodged the application is a person who is conversant with the system and he ought to have been aware of the requirements of the Rules. The Counsel cited the decision in ***William Shija v. Fortunatus Masha*** [1997] TLR 213, in which it was held that the counsel's negligence cannot amount to a sufficient reason for extension of time.

The respondent argued that the applicant's duty to show sufficient cause has been stated in numerous decisions, including ***Republic v. Yona Kaponda & 9 Others*** [1985] TLR 84. Such cause is, according to the respondent, as defined in ***Daphyne Parry v. Murray Alexander Carson*** [1963] EA 563. In the respondent's view, filing of the application after the expiry of the time prescription cannot amount to a cause sufficient enough to allow an extension of time.

On the duty to account for the days of delay, the respondent's take is that the affidavit has not accounted for the delay spanning between 25th August, 2020, the date on which the impugned decision was delivered, to

25th September, 2020, when filing of the application for leave allegedly fell through. The respondent argued that such failure is unacceptable, consistent with the decision of the Court of Tanzania in ***Vodacom Foundation v. Commissioner General (TRA)***, CAT-Civil Application No. 107/20 of 2017 (unreported).

On the follow up of the copies of the judgement, the respondent's view is that this contention is not evidenced, drawing the conclusion that the alleged follow up never existed. The respondent urged the Court to dismiss the application with costs.

From these convincing submissions, the issue for settlement is whether the application is meritorious. As unanimously held by the parties, extension of time is a prayer that is granted on the Court's discretionary basis, upon presentation of a credible case by the applicant of such extension. The party in whose favour the extension is granted is under an unfailing obligation to present a credible case, able to convince the Court that circumstances of the case warrant the exercise of such discretion. As he does that, the applicant must also demonstrate that he acted in an equitable manner (***Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others***, Sup. Ct. Application 16 of 2014)

Presentation of a credible case entails meeting some or all of the criteria set in various court decisions. These include those that were set in ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported), in which conditions for the grant of extension were set out. These are:

"(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.

(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."

It is worth of a note that the conclusion that the application has met the threshold for its grant entails looking at depositions in the affidavit, knowing that such depositions are evidence. These determine the merits or demerits of the application, unlike the parties' submissions which are *generally meant to reflect the general features of a party's case, and are elaborations or explanations on evidence already tendered.* (See: ***The Registered Trustees of Archdiocese of Dar es Salaam v. Chairman***

Bunju Village Government and Others, CAT-Civil Application No. 147 of 2006 (unreported)).

Looking at the applicant's affidavit, what comes out as the reason for the delay is the system failure that occurred when the applicant presented her application for e-filing. This is the failure that occurred on 25th September, 2020, the day on which the said application was to be filed. This means that the system failed him on the 32nd day since the decision that she intends to challenge was delivered. The implication here is that the applicant would have filed the application belatedly had the system given her an all clear, and had her application admitted. The application would be late by at least two days, rendering it time barred and liable to dismissal. It is clear that the malfunctioning of the system, if any, would only enable the applicant have her application admitted but it would not address or cure the delay in filing the application. This draws a conclusion that the application would not see the light of the day. In view of the fact that the system malfunction would not serve the application whose filing fell through, that reason cannot serve as the ground or a cause that is sufficient to allow the application for extension of time.

As stated by the respondent, the applicant chose to take action at the tail end of the time allocated for filing the application. The contention by the respondent is that the applicant was waiting to be furnished a copy of the judgment that would enable her institute the application for leave to appeal. I wish to state here and now, that the delay arising from not being furnished copies thereof does not, in the circumstances of this case, constitute a sufficient cause. My reluctance is fortified by the fact that there is no evidence that such copies were requested by the applicant, as doing so would have the effect of putting computation of time on hold. This contention follows the footprints of the Court's reasoning in ***Hotel & Lodges (T) Ltd v. R.S. Nkya t/a R.S. Nkya Water Bowser & Spares***, HC-Misc. Civil Revision No. 125 of 2018 (MZA-unreported), in which it was held:

"..... As it is now, we only know that judgment was delivered on 20th of April, 2016, certified and supplied on 23rd September, 2016, but without having the benefit of knowing what happened in between these dates and whether the applicant requested it. Relying on the date on which the judgment was certified or supplied is fraught with serious dangers of having procrastinating litigants who wake up from slumber, come late and move the trial court to hurriedly certify decisions sought to be appealed against and

*run with them to institute appeals dozens of months after the time prescription. This will mean burying diligence and rewarding apathetic litigants, this is what the Court of Appeal abhorred in its decision in **Tropical Air's** decision that the applicant cited.*

*But even assuming that the certified copies were delivered to the applicant without requesting them but pursuant to what the counsel for applicant alleged to be the trial magistrate's promise, this would have provided the applicant the legitimacy of seeking refuge in section 19 (2) of the Law of Limitation Act, Cap. 89 R.E. 33 (as amplified in **Mary Kimaro v. Khalfan Mohamed** [1995] TLR 2002), which is to the effect that time to file an appeal begins to run from the time the copy of the judgment is supplied, effectively allowing netting off of the time during which the prospective appellant was waiting to be served with certified copies of the decision he seeks to impugn. The applicant would not need to go through the baptism of fire he is currently enduring."*

Failure to establish that the applicant requested for the copy of the judgment puts her in a position where she has to account for every single day of delay between 25th August, 2020 to 25th September, 2020, a feat she has failed to perform, in line with holding in **Vodacom Foundation** (supra)

cited by the respondent. The decision in the cited case is a reiteration of what was held in ***Bushiri Hassan v. Latina Lucia Masaya*** CAT-Civil Application No. 3 of 2007 (unreported). The upper Bench guided as follows:

"...Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

Consequently, I hold that the applicant has failed to meet the legal threshold set for extension of time and, accordingly, I dismiss the application with costs.

It is so ordered.

DATED at **MWANZA** this 22nd day of July, 2021.




M.K. ISMAIL
JUDGE

Date: 22/07/2021

Coram: Hon. C. Tingwa, DR

Applicant: Present

Respondent: Paschal Kamani

B/C: J. Mhina

Court:

Ruling delivered on this 22.07.2021 on the presence of both parties.

C. Tingwa

DR

At Mwanza

22nd July, 2021

