

THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. CIVIL APPLICATION NO. 39 OF 2020

(C/F Misc. Civil Application No. 8/2013 High Court of Tanzania
at Moshi)

MUSA MANYAKAAPPLICANT

VERSUS

THE ATTORNEY GENERAL1st RESPONDENT

THE INSPECTOR GENERAL OF POLICE (IGP)...2nd RESPONDENT

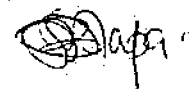
(8th & 28th July, 2021)

RULING

MKAPA, J.

The applicant Musa Manyaka is seeking for extension of time to file notice to appeal out of time against the decision of this court **A.N.M. Sumari, J.** (as she then was) in **Misc. Civil Application No. 8 of 2013** delivered on 20th October 2015. The application was brought under section 11 (1) of the Appellate Jurisdiction Act CAP 141 [R.E. 2002] (Now R.E. 2019) and is supported by applicant's sworn affidavit.

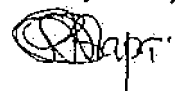
The respondents filed counter affidavit and opposed the application. As regards to the facts of the present matter the



applicant was a member of the Tanzania Police Force until sometime in February 1993, when together with five other persons were charged with armed robbery. On 22nd June 1994, the applicant was acquitted and on the same date he was dismissed from the Police Force by the Regional Police Commander for Kilimanjaro Region (RPC). The applicant unsuccessfully appealed to the Inspector General of Police who upheld the decision of the RPC. Still aggrieved, he filed **Civil Case No. 8 of 2004** in this Court praying for among others reinstatement due to illegal termination. The Court dismissed his claims for non-exhaustion of administrative remedies vide the responsible Minister.

Still undeterred, he filed another appeal to the Court of Appeal through **Civil Appeal No. 52 of 2016**. For yet another time luck was not on his side on the reason that the notice of appeal and the letter requesting for documents for the preparation of record of appeal were not timely served to the respondents. In the circumstances, the Court of Appeal struck out the appeal. Since then the applicant took his pursuit where he lodged multiple applications but the same were struck out on technicalities hence the current application.

When the application was called for hearing parties consented and the Court ordered for the application to be argued by way



of filing written submissions. Mr. Severin Lawena learned advocate appeared and represented the applicant while the respondents were jointly represented by Mr. Yohana Marco, learned State Attorney.

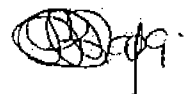
Supporting the application, Mr. Lawena submitted that the applicant filed his appeal to the Court of Appeal which was registered as **Civil Appeal No. 52 of 2016**, unfortunately, the same was struck out on 12th July, 2018 on the reason that the applicant had failed to serve the other party a copy of Notice of Appeal and letters applying for ruling and proceedings contrary to Rule 84 (1) and 90 (1) of the Court of Appeal Rules. That, he immediately filed **Misc. Civil Application No. 26 of 2018** praying for extension of time to file Notice of Appeal, however the same was struck out for want of prosecution. He lodged another application **Misc. Civil Application No. 15 of 2019** but the same was struck out on a preliminary objection hence the current application.

Mr. Lawena went on explaining that, the current application has been brought under section 11 (1) of AJA which provides for a requirement for an applicant to give reasons for the delay since the power to grant extension of time is upon court's discretion as was held in numerous decisions of the Court of Appeal including the landmark case of **Lyamuya Construction**

Company Ltd V Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT at Arusha. Thus, he prayed for the Court to exercise its discretionary powers by granting the application sought.

Mr. Lawena went on submitting that the applicant had always acted promptly and diligently in prosecuting his case. That, he lodged his notice of appeal timely, and also timely applied for copies of all necessary court's documents , only that he failed to serve the respondents on time. Mr. Lawena further referred to the cardinal principle of the law that application for extension of time has to demonstrate good cause for the delay. It was Mr. Lawena's view that the applicant has demonstrated reasonable cause to warrant the granting of extension of time.

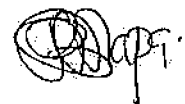
Mr. Lawena went on explaining that, despite the fact that extension of time is Court's discretion, in the present matter there is illegality on the dismissal order which this Court did not consider. Furthering his argument Mr. Lawena argued that, the applicant had exhausted all remedies prior to filing **Civil Case No. 8 of 2004** which was struck out on the reason of non-exhaustion of administrative remedies while there was proof on record that he appealed to the responsible Minister who upheld the Inspector General's decision. Thus the counsel for the



applicant was of the view that, **Misc. Civil Application No. 8 of 2013** was filed for seeking extension of time for the applicant to file review after the discovery of the above mentioned new evidence. However, the same was dismissed for lack of merit which is contrary to the law. He finally prayed for the application to be allowed for interest of justice.

In reply Mr. Marco vehemently opposed the application to the effect that, the same is incurably defective. That, the chamber summons is dated 8th October, 2020 while the supporting affidavit stated that it was filed on 18th November, 2020. The difference suggests that the two documents were filed separately hence un-procedural.

Furthering his argument Mr. Marco contended that the chamber summons is not clear as to which amongst the decisions, the applicant is seeking for time to be extended. That, although the heading reads the Application is against **Misc. Civil Application No. 8 of 2013**, High Court Moshi, the same is not stated in the applicant's affidavit hence the application has no legs to stand upon. He further argued that, in paragraph 21 of the applicant's affidavit he deponed that his appeal has overwhelming chances of success as gathered from the Memorandum of Appeal marked as "MU12" yet the said annexure was not attached to the said affidavit.

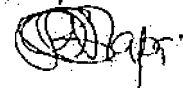


It was Mr. Marco's further submission that, the applicant also alleged the illegality of the dismissal order but failed to disclose which matter was the dismissal order given against as the same had not been pleaded in the affidavit. He added that, although the prayer for extension of time is entirely in the discretion of the Court, the same has to be acted judiciously as the applicant has to show sufficient reasons and when there allegation on illegality, the same should be of sufficient importance. He placed reliance in the case of **the Principal Secretary, Ministry of Defence and National Service V Devram Valambia** [1992] TLR 185.

It was Mr. Marco's contention that, in the instant application one cannot account for each day of delay as date of the decision of the impugned decision subject of the appeal has not been disclosed for this Court to determine as to whether there is sufficient cause to grant the application sought. The same applies to the allegations on illegality. He finally prayed for the application to be struck out with costs for being incompetent.

The applicant filed rejoinder wherein the contention of the respondent have been denied and the contents of the application have been reiterated.

Having considered both parties' affidavits and submissions for and against the application, the question to be asked is;



Whether the applicant has demonstrated sufficient cause for the court to exercise his discretion in granting the application sought?

It is now well settled that, an application for extension of time is entirely upon the discretion of the court to grant it or not. This discretionary power however, is judicial in nature and must be confined to the rules of reason and justice. It also has to be judicial and not according to private opinion or arbitrarily.

In **R V Yona Kaponda & 9 Others** [1985] T.L.R. 84 the Court lay down the fact that court should not only consider if there are sufficient reasons for the delay but also the reasons have to be sufficient enough for extending time to entertain an appeal. The same position was echoed in the case of **Daudi Haga V Jenita Abdon Machafu, Civil Reference No. 1 of 2000** and **Lyamuya Construction (supra)**.

In the instant application the counsel for the applicant has argued that failure by the applicant in filing on time the notice to appeal was occasioned by numerous technicalities in previous applications. However, the impugned decision subject to this application, has neither been pleaded in the applicant's affidavit nor attached as a copy to the application.


It would be necessary from the very outset to highlight the fact that in order for the Court to exercise its discretion, it is critical



for the Court to be furnished with necessary information which usually is obtained from the affidavit deposed in support of the application. However, as rightly submitted by the counsel for the respondent that, neither the chamber summons nor the applicant's affidavit had the applicant deposed on the impugned decision intended to be appealed against. Thus it is impossible for the Court to ascertain the duration of delay and whether the same had been accounted for in relation to the alleged applications which were struck out on technicalities.

A quick perusal of the applicant's affidavit as well as the submissions has revealed how the appeal/applications were dismissed or withdrawn. However no attachment has been annexed to substantiate his claims relating to **Misc. Civil Application No. 8 of 2013**. Additionally, the applicant alleged the illegality of the RPC's decision in terminating his employment. Indeed illegality of a decision can be a good cause for enlarging a limitation period. However, no record of the said decision had been made available. In the absence of any material evidence this Court cannot act on speculations.


In the circumstances, I am satisfied that the application is incompetent and proceed to struck it out with costs. Further, the applicant is at liberty to refile within 21 days from the day of this Ruling.



It is so ordered

Dated and delivered at Moshi this 28th day of July, 2021




S. B. MKAPA
JUDGE
28/07/2021