

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 130 OF 2020**

*(Originating from High Court Mwanza decision of Honourable A. Z. Mgeyekwa, High Court Civil Appeal No. 32 of 2019)*

**VALENCE DESDERIUS TUNUGU.....APPLICANT**

**VERSUS**

**JUDITH GERALD LUSATILA.....RESPONDENT**

**RULING**

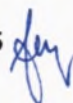
**Date of last order: 21/4/2021**

**Date of Ruling: 2/07/2021**

**F. K. MANYANDA, J.**

The Applicant is moving this Court under section 5(2)(a) and 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R. E. 2019] and Rule 45(a) of the Tanzania Court of Appeal Rules, 2009 read with section 14(1) of the Law of Limitation Act, [Cap. 89 R. E 2019] to extend the time within which to file leave to appeal to the Court of Appeal out of time.

The application is made by way of chamber summons supported with an affidavit sworn by Valence Desderius Tunugu which gives the background and the grounds thereof.



The Applicant was an appellant in Civil Appeal No. 33 of 2019 of this Court which was dismissed by Honourable Mgeyekwa, J. The Appellant was dissatisfied, he lodged a notice of appeal in the Court of Appeal intending to challenge the said decision. Then, he made an application for leave to appeal. However, his affidavit established grounds for certification of points of law worth of triable by the Court of Appeal. That application which was in time, but it was dismissed for been misplaced.

The Applicant came with this application for extension of time in order to be condoned to lodge a fresh application for leave to appeal to the Court of Appeal.

Hearing of this application was conducted by way of audio teleconference due to the challenges posed by the COVID-19 Pandemic. The Applicant was represented by Mr. Boniface Sariro, learned Advocate and the Respondent enjoyed the services of Mr. Masanja Ngofilo, learned Advocate.

Mr. Sariro argued in support of the Application basing on facts deposed in paragraph 3 of the affidavit which gives the grounds of the application. That paragraph show that the Applicant had prior filed a notice of appeal

and an application for leave to appeal to the Court of Appeal which was registered as Miscellaneous Civil Application No. 48 of 2020. However, that application was dismissed for been omnibus, hence it was misplace. Therefore, he filed the instant application. He was of a view that such a delay is what is termed as legal technical delay which is acceptable in law as good cause for delay.

Moreover, Mr. Sariro submitted that the Applicant did not delay much he acted promptly. The application was struck out on 29/09/2020 and filed the current application on 22/10/2020. He cited the case of **Amon Girls Home vs Isaac Charles Kamela** Civil Application No. 325/8 of 2019 of the Court of Appeal of Tanzania where it was held that in an application for doing an act out of time every day of delay must be accounted for. He contended that in this matter is in a delay of a single day and the applicant has been in corridors of the Court the same may constitute a good cause for delay. He prayed the application to be allowed with costs.

The counsel for the respondent Mr. Masanja Ngofilo submitted opposing the application arguing that extension of time is the discretion of the Court; a discretion which has to be exercised judicially. He was of the

views that the previous application was flawed for been omnibus also it didn't fall under Part IIIC of the Magistrates' Courts Act, [Cap 11 R. E. 2019]. This was due to negligence of the Advocate.

Moreover, Mr. Masanja was of the views that from 29/9/2020 to 22/10/2020 is 22 days, therefore the Applicant did not act promptly.

He cited the case of **Dar es Salaam City Council vs S. Group Security Co. Ltd**, Civil Application No. 234 of 2015 where the Court of Appeal of Tanzania insisted that delay even of a single day must be accounted for. He prayed the application to be dismissed with costs.

I have dispassionately gone through the rival submissions by the Counsel of both sides and the records. I find the issue here is whether the Applicant has established good cause for extending of time for him to file application for leave to appeal to the Court of Appeal of Tanzania.

From the record and the submissions by the Counsel, it is not in dispute that the Applicant lodged a notice of appeal on 14/04/2020 intending to appeal against a decision of this Court dated 25/03/2020. That application was filed in time also. The delay came about between 14/05/2020 and

29/09/2020 this delay was not a fault of the Applicant, but rather, as conceded by the Counsel for the Respondent's Counsel, it was due to the negligence of the Counsel of the Applicant.

Whatever the cause of the legal ailment in respect of the first application which was filed in time, the delay is out of the Applicant's blame. This is what is termed in law as technical delay.

Such a delay is held to constitute good cause for delay and Courts have been granting extension of time in circumstances of this nature.

Without wasting much time, I find that the circumstances of this application makes the same to deserve extension of time.

In the upshot, for reasons stated above, I do hereby extend the time for the Applicant to file the application for leave to appeal to the Court of Appeal. The Applicant should file the application for leave within sixty (60) days from the date of this ruling. Cost in the course. Order accordingly.



  
**F.K. MANYANDA**  
**JUDGE**  
**2/7/2021**