

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION NO. 12 OF 2021**

(Arising from High Court of Mwanza Civil Appeal No. 53 of 2020 originating from Civil  
Case No. 3 of 2020 from the Resident Magistrate Court of Mwanza)

**SAROIYA COMPANY LTD MWANZA.....APPLICANT**

**VERSUS**

**BAKARI ZAHORO HIZZA..... RESPONDENT**

**RULING**

**Date of Last Order: 14/07/2021**

**Date of Ruling: 29/07/2021**

**F. K. MANYANDA, J**

This is an application for extension of time within which to apply for leave to appeal to the Court of Appeal of Tanzania. The Application is made under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019] and it is supported with an affidavit sworn by Steven Emmanuel giving the background of this matter and grounds thereof.

Briefly, the Applicant is aggrieved by a decision of this Court in Civil Appeal No. 53 of 2020 delivered on 30/10/2020. She contends that she filed a notice of appeal on 26/11/2020 in the Court of Appeal. However



before processing the application for leave, which is a prerequisite step in appeals of this nature, she travelled to Burundi on 28/11/2020, while there, the borders between Tanzania and Burundi were closed until 27/01/2021 when she was allowed to return to Tanzania.

That, after her return she went on isolation camp for 7 days until when she was cleared that she gave instructions to her counsel to proceed processing the application. As time had elapsed the Counsel chose to make this Application for extension of time.

The Respondent has contested against this application, hence this Court ordered hearing by way of written submissions.

Mr. Steven Makwega, learned Advocate, filed the written submissions for the Applicant and Ms. Janeth Katinda Eden filed for the Respondent.

Submitting in support of the Application Mr. Makwega adopted the chamber summons and the affidavit. In addition, he state that he was instructed to file this application by his client Marietha Michael Essy, the Principal Officer of the Applicant, when the time for filing application for leave to appeal to the Court of Appeal of Tanzania as of right had elapsed.



He gave the reasons that his client after successfully filing a notice of appeal, she travelled to Burundi on 28/11/2020 where she was locked down until on 27/1/2021 when she returned. Even after returning she was quarantined for seven (7) days. He filed this application for leave, which is a pre-requisite condition in second appeals to the Court of Appeal of Tanzania on 08/02/2021. He prayed this application to be allowed because the delay was caused by mishaps out of control of his client.

The Respondent counted these arguments stating that there is no evidence showing that the said Marietha Michael Essy did ever travel to Burundi. That even if it is proved that she travelled to Burundi; that couldn't have prevented her from filing the application for leave in time because there was one of the directors of the Company in Tanzania and Secondly, through Information Communication Technology she could not have been prevented to direct, furnish instruction and cause the application to be filed. He cited the case of **Wambura N. J. Wambura vs Principal Secretary Ministry of Finance and Another**, Civil Application No. 320/01 of 2020 which it was held that where the applicant claimed to have travelled for funeral which made him late to take necessary steps in Court with no proof of such travel did not exhibit good

cause to grant extension of time. The Counsel insisted that each day of delay must be accounted for as was held in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 02 of 2010 (unreported).

Those were the submissions by the learned Counsel for both sides. I have dispassionately considered the same and the records of this matter. Basically the issue for determination is whether the applicant has established good cause for this Court to exercise its discretionary powers to extend the time within which for the Applicant to file the application for leave to appeal to the Court of Appeal.

The principles of law governing extension of time was pronounced by the Court of Appeal of Tanzania in several cases including the case of **Lyamuya Construction Company Ltd (supra)** at page 6 where it stated as follows:-

- (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 shoppiness in the prosecution of the action that 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 the illegality of the decision sought to be challenged.

Now, applying the principles above to the matter in hand, one can see that the Applicant is required to account for all period of delay.

In this case, from paragraph 2 of the affidavit, it can be learnt that the impugned judgment in Civil Appeal No. 53 of 2020 was delivered on 30/10/2020. This application was filed on 08/02/2021, been late by 99 days. This is, if the 60 days of grace period are deducted, there remains 39 days unaccounted for. This days are said to be the inordinate delay.

On the others hand, it is submitted that the Applicant counted for 39 days delay that the Principal Officer of the Applicant was out of Tanzania in Burundi and was locked down thereto from 28/11/2020 to



27/01/2021. However as rightly argued by the Respondent, there is no scintilla of evidence supporting this assertion.

Moreover, the affidavit shows that the judgment complained of was delivered on 30/10/2020, but the notice of appeal was filed on 26/11/2020. During this time the Applicant was present in Tanzania. She was expected to have instructed her Counsel to proceed on with filing of the application for leave to appeal to the Court of Appeal. I say so because both the Counsel and the Applicant knew well that leave is a pre requisite requirement for one to appeal to the Court of Appeal of Tanzania. Mere filing of a notice of appeal was not sufficient.

Either, I am at par with the Respondent's Counsel that the act of been out of the Country, with the development of the Information Communications Technology whereas the globe has become a mere village, could not prevent her from issuing the relevant instructions to her Counsel. The Respondent has yet a Company registered under our laws has more than one director. Where Marietha Michael Essy was allegedly to be in Burundi; then the other Director remaining in Tanzania could have acted by issuing the relevant instruction and proceed on lodging the application for leave. This fact was not rejoined by the Applicant to tell





us the other side of the coin. It may none rejoinder on this fact be taken to mean that the Applicant has no reply, which I find that it amounts to admission of Applicant what has been said by the Respondent.

It is my firm opinion that in absence of proof of the contentions that Marietha Michale Essay, Principal Officer of the Applicant was out of Tanzania in Burundi due to lack of supporting documents tendered, the Applicant story remains unsupported and hence unreliable.

The Court of Appeal in the case cited by the Respondent of **Wambura N. J. Wambura (supra)** stated as follows:-

*"it is elementary law that he who alleges must prove as provided for under section 110 of the Evidence Act [Cap. 6 R.E 2019]. In this case the applicant, has alleged that he had travelled to Musoma to attend to family matters. However, he has not presented any proof to that effect. As correctly argued by the learned State Attorney, the applicant could have tendered fare tickets and death certificate, burial permit or proof from the local area authority to prove the alleged death. The applicant has pleaded ignorance of the law that he was not aware that he could apply for reference against the decision of the single Justice, otherwise, he would have kept the tickets and tendered them herein. Is this excuse plausible? The answer to this is in the negative. **This is so because should the Court give prominence to this kind of reasoning, there***

***would be floodgates of applications with the similar excuses”.*** (Emphasis added).

In the instant matter, the applicant’s principal officer alleged to have been in Burundi, she was supposed to prove by producing fare tickets, visa or passport, lock down documents from relevant authorities in Burundi or Tanzania. Failure to do so makes the Application fall short of establishing good cause for this Court to exercise its discretionary powers to extend the time within which to apply for leave.

I agree with the Counsel for the Respondent that the Applicant has failed to account for delay of each day as held in **Lyamuya Construction Company Ltd (supra)**.

In the upshot and for reasons stated above, I find that this application has no merit.

Consequently, I do hereby dismiss this application in its entirety for want of merit with costs. Order accordingly.

