

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

MISC. CIVIL APPLICATION No. 67 OF 2021

(Arising from the High Court Civil Appeal No.07 of 2021)

CHRISTOPHER COSMAS.....APPLICANT

VERSUS

FURAHA EVARIST.....RESPONDENT

RULING

Last Order date: 19.08.2021

Ruling Date: 30.08.2021

M. MNYUKWA, J.

By way of chamber summons, the applicant Christopher Cosmas applied to this court for an order to extend time to file an appeal to this court out of time after the judgement of the Civil Appeal No. 07 of 2021 delivered on 25/05/2021 being struck out by Hon. Mashauri, J for failure to move the court properly. The present application is preferred to this court under section 25(1) (b) of the Magistrate Courts Act, Cap 11 [Re: 2019] supported by the affidavit sworn by Christopher Cosmas, the applicant.



The brief background of the matter is that, the present application emanates from the decision of Mwanza Urban primary court in Civil Case No. 286 of 2020 and the District Court of Nyamagana in Civil Appeal No. 50 of 2020. Aggrieved by the decision of the first appellate court, the applicant appealed before this court in Civil Appeal No. 07 of 2021 which was timely filed. Upon hearing, this court before Mashauri, J. struck out the appeal on 25.05.2021 in which the decision was delivered in the absence of all parties for want of internet connection. Thereafter, the appellant was notified about the delivering of the judgement on 28.05.2021, whereby on 17.06.2021 knocked on the door of this court with an application for extension of time to file his appeal before this court out of time.

The applicant through his chamber application advanced four prayers *which include: -*

- (i) That this honorable court be pleased to extend time to file an appeal before this court out of time.*
- (ii) Incidental orders as may be necessarily made.*
- (iii) Costs of this application due in the cause*
- (iv) Any other reliefs as this honorable Court shall deem fit and just to grant.*

The matter was argued orally through Audio Teleconference where parties were remotely present on 19.08.20121. the applicant Mr.



Christopher Cosmas appeared in person, un-represented while the respondent afforded the services of Mr. Mussa, a learned advocate.

Submitting for the application, the applicant fronted reasons to be considered by this court. He avers that he is the applicant in this application and the Civil Appeal No. 07 of 2021. His appeal before this court was struck out on legal technicalities. He added that, the main reason being the document was not proper and in fact he was not aware of what has been written in his appeal. He thus, filed this application to be extended time to file his appeal.

Responding to the applicant's submissions, Mr. Mussa learned advocate, started by praying this court to adopt the respondent's counter-affidavit to form part of his submissions. He went on to state that; the applicant's affidavit falls short of reasons as to why he did not file his appeal at a prescribed time after it was struck out by the court. He added that, from the date the appeal was struck out to the date this application was filed, it was almost 23 days and the applicant did not account for the delay. Insisting his point, he referred this court to page 7 of the judgment in the case of **A- One Product Brothers vs Abdallah Almas & 25 Others**, Civil Application No. 586/18/ 2017 where it was held that for the application for extension of time, each day of delay must be accounted for.



He went on to submit that, the applicant's claim that he was not aware of what was written on his appeal when it was struck out can not be termed as a defence in law as ignorance of law is not a defence. Insisting, he cited the case of **Ally Kinanda vs Republic**, Criminal Application No. 01 of 2016 CAT (unreported), where it was held that ignorance of law is not an excuse for extension of time. He prays this court to dismiss the application with costs.

Rejoining, the applicant submitted that, from when the judgment was delivered in his absence on 25.05.2021, he was informed and received the copy of the judgment on 28.05.2021. He decided to look for an advocate who drafted his documents. He went on to state that he tried to file his appeal on 1.06.2021 but he failed to get a control number on time. He insisted that, the court refused to receive and stamp the application until payments are done. He substantiates his claim by referred this court to the annexures in his reply to the amended counter affidavit. He insisted that the problem of getting control number on time was beyond his control. He prays this court to grant his application.

I have given careful consideration to the arguments advanced by the applicant as well as the respondent learned counsel, I find the central issue for consideration and determination is whether sufficient reasons



have been advanced to warrant the extension of time sought by the applicant.

It is an established principle that the decision to grant or not grant an order of extension of time is within court discretion. It all depends upon a party seeking an order to adduce sufficient reasons that prevent him from doing what he was supposed to do within time.

The position of the law is clear and settled when it comes to granting an order for extension of time to appeal. There is a surfeit of legal authorities in this respect. In the case of **Benedict Mumelo vs. Bank of Tanzania** Civil Appeal No. 12 of 2002 the Court of Appeal of Tanzania decisively held;

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

I have revisited the applicant's affidavit and his reply to an amended counter affidavit and going through his submissions to find out what transpires to this application. Going to the records, I find this application is for an extension of time to file an appeal out of time in respect of the decision of Civil Case No. 50 of 2020. The law requires any person



aggrieved by the decision to file an appeal within 30 days and if for reasons to be accepted by the court, may apply for an extension of time.

Section 25(1)(b) of the Magistrates Court Act Cap 11 [RE: 2019] reads: -

"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 therefrom 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."

The available record shows that, the applicant did not see justice in the Civil Appeal No. 50 of 2020 before Nyamagana District Court and on time, he appealed to this court vide Civil Appeal No. 07 of 2021. Upon hearing, the appeal before this court was struck on 25.05.2021 for legal technicalities. The applicant is now applying to this court to extend the time to file an appeal out of time.

It has to be noted that, from the date the judgment was delivered by the district court to the date the applicant appealed to this court, the appeal was filed within time. Following the defects, the appeal was struck out on 25.05.2021 that marks a date for the applicant to account for, to the date he filed this application. Going to the records, it is clear that the decision on Civil Appeal No. 07 of 2021 was delivered in the absence of all



parties and the applicant claims that he was notified and supplied by the copy of the judgement on 28.05.2021.

In the present application, I find it out that the applicant managed to give reasons and account for each day of delay from 28.05.2021 when he was notified and supplied with a copy of the judgment to 17. 06. 2021 when he filed this application. The applicant claimed that after he received a copy of judgment, he consulted a lawyer and he was keeping on trying to get the control number for payment until when he was afforded with one and managed to file this application on 17.06.2021.

In fact, I agree with the respondent learned counsel with the cited case of **A- One Product Brothers vs Abdallah Almas & 25 Others**, Civil Application No. 586/18/ 2017 which stated that delay of even a single day should be accounted for. Also, the authority in the case of **Bushiri Hasani vs. Latifa Lukiko Mashayo**, Civil Application No. 03 of 2007 CAT which held that: -

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

Nevertheless, in the case at hand, I am satisfied that the applicant has explained away the delay from the moment when the Civil Appeal No.



07 of 2021 was struck out by this court on 25.05.2021 up to 28.05.2021 when he was notified about the deliverance of the decision of the court. The applicant had the support of the records that the decision was delivered in the absence of all parties on 25/05/2021. The part of the contents of the Judgement reads as hereunder:

".... Judgement delivered in court in absence of all parties for want of internet to connect with them this 25th day of May 2021, parties be notified and called to collect copies of judgement."

The available record is silent if immediately after the decision the parties were notified. The applicant averred that he became aware of the decision on 28.05.2021 which was on Friday. I subscribe to his assertion that despite being on weekends, he seeks legal directives after the first appeal was struck out on legal technicalities and he managed to submit the application on 01.06.2021 through the electronic filing system. To substantiate his claim, he has attached in his reply to the amended counter-affidavit, Annexures A, B, and C which are the electronic filing systems print out to show that this application was submitted for filing on 01.06.2021 and the delay was a result of waiting for a control number.

Going to the records, it is without doubt that the applicant did not show when he was exactly supplied with the control number for him to make



payments and file the application. But so long as his intention was to file this application on 1/06/2021 and it is undisputed that the filing system failed to generate the control number to enable him to made payment, the benefit is given to the applicant because his delay is a technical delay.

In the case of **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 it was held that: -

"...distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted"

Guided by the above case law, in the circumstance of this matter and considering the fact that the applicant is a layman and unrepresented, I agree with the reasons so advanced by the applicant that, what transpires was beyond his control. I am settled that the applicant managed to adduce sufficient cause for his delay for this court to grant his application.



In the upshot, I find this application has merit, and the applicant is granted a period of 14 days to file his appeal before this court. I make no order as to costs.

It is so ordered.




M. MYUKWA
JUDGE
30/08/2021

Ruling delivered on 30/08/2021 via audio teleconference whereby all parties were remotely present.


M. MYUKWA
JUDGE
30/08/2021