

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC. CIVIL APPLICATION NO. 29 OF 2021

*(Arising from the order of High Court of Tanzania at Dodoma, Land
Application No.62 of 2019)*

EVALINE ISMAIL MAPUGAAPPLICANT

VERSUS

EDWARD KODI NYANGUNGU.....RESPONDENT

(Administrator of the Estate of the

Late Agnes Maile Kapingo)

RULING

Date of Ruling: 11.08.2021

Dr. A.J. Mambi. J.

This is an application for an extension of time to file an application for leave to appeal to the Court of Appeal. The applicant filed an application supported by an affidavit seeking for an extension of time.

During hearing both parties were unrepresented. The applicant briefly submitted that she has filed the application for extension of time for leave to enable her to appeal to the Court of Appeal. The

applicant has sufficient reason that will move this Court to grant an extension of time as prayed. He argued that the delay in filing the application was due to the fact that she was nursing her husband who was admitted at the Hospital in Dar Es Salaam.

In response, the respondent briefly submitted that the applicant affidavit does not show sufficient reasons for the delay since the applicant has stayed for a long time without any reason. The respondent argued that having observed the applicant stayed more time without peeling he filed an application for execution of the decree. .

In her rejoinder, the applicant briefly submitted that she has clearly indicated his good cause for delay under her documents.

I have considerably perused the documents such as affidavit and other documents on the file and considered the submissions made by both parties to find out whether this application has merit or not. The key question to be determined and answered is whether the applicant has advanced sufficient reason in her application or not.

It is trite law that where any party seeks for an extension of time to file application, or an appeal out of time he/she is required to advance sufficient reasons in his/her affidavit before the court can consider and allow such application. This was clearly underscored by the court in **REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)**. The court in this case observed that;

“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.

This means that in determining an application for extension of time, the court has discretion to determine if the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. In other words, the court need to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to shown such reasons were operated for all the period of delay.

My perusal from the records has not seen any sufficient reason for application of an extension of time and there is neither point of law nor any clear point of illegality that warrants sufficient reason that could have moved this court to grant leave for this application. Looking at the affidavit, under paragraph 8 the applicant is claiming that she in Dar Es Salaam nursing her husband who was admitted at the Hospital in Dar Es Salaam. I have gone through the documents from that hospital that was attached. Under that document it appears the applicant husband was admitted at the Hospital 22/1/2021 and discharged on 29/1/2021. It is also on the records that the Judgment of this court was pronounced before the applicant on 18th December 2020. This means that the applicant just stayed without making any effort until 34 days expired before her husband was admitted. In other words the applicant stayed for

more than one month (almost 34 days) without filing her application for leave. In my view the delay for 34 days without reason is too long for this court to consider and grant an application for extension of time. In my view this cannot be said to be the sufficient reasons for delay as the applicant was required to show what blocked or bared him from filling his application immediately after the ruling was made. Indeed the applicant has not counted each day of the delay.

The Court of Appeal of Tanzania in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 at Dar es Salaam (Unreported) where it was held,

“Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

*(a) The **length** of the delay*

*(b) The **reason of the delay** – whether the delay was caused or contributed by the dilatory conduct of the applicant?*

*(c) Whether case such as whether there is a **point of law or the illegality** or otherwise of the decision sought to be challenged.”*

As underscored by the Court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015**: High Court of Tanzania (Commercial Division) at Dar es Salaam (Unreported) which was cited by the applicant respondent that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only

be granted where it has been sufficiently established that the delay was with sufficient cause.....”

The court in **KALUNGA AND COMPANY, ADVOCATES Versus NATIONAL BANK COMMERCE LIMITED (supra)** held that:

“Under Rule 8 of the Court of Appeal Rules 1979, the Court has a wide discretion to extend time where the time has already expire, but where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material upon which the Court may exercise the discretion given”..

In my view staying for more than one month without taking any effort apart from relying on her husband illness who was admitted after 34 days of the judgment pronouncement cannot be said to be the sufficient reasons for delay as the applicant was required to show what blocked or bared her from filling her application immediately after the Judgment. See the decision of the Court in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD (supra)**, where the court underscored as to what it amounts to “sufficient cause.

The court in **KALUNGA AND COMPANY, ADVOCATES Versus NATIONAL BANK COMMERCE LIMITED (supra)** held that:

“Under Rule 8 of the Court of Appeal Rules 1979, the Court has a wide discretion to extend time where the time has already expire, but where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material upon which the Court may exercise the discretion given”.

I am aware that an application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. See **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP (Supra)**.

Looking at the affidavit by the applicant, I have not seen sufficient reasons for her delay as to why she stayed for more than one month without filling her application. The applicant under the affidavit did not indicate any sufficient reasons for the delay. I am of the considered view that, in the absence of really sufficient reasons, thirty seven days was a long time for one to be considered for an extension of time.

Pursuant to the foregoing, I am of the firm considered view that this application has no merit since the applicant has failed to present sufficient reasons for its application for an extension of time under the application at hand. In the view of aforesaid, this application is devoid of merit and it is accordingly dismissed. Since the parties are closely rented, I find it not proper to order for any cost. Parties to bear their own costs.

Dr. A. J. MAMBI

JUDGE

11/08/2021

Ruling delivered in Chambers this 11th day of **August, 2021** in presence of both parties.



Dr. A. J. MAMBI

JUDGE

11/08/2021

Right of appeal fully explained.



Dr. A. J. MAMBI

JUDGE

11/08/2021