

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

MISC. CRIMINAL APPLICATION NO. 23 OF 2021

(Arising from Criminal Appeal No. 04 of 2021 at the District court of Sengerema original Criminal Case No. 03 of 2021 in Nyakarilo primary court)

KAYORA SENYANGEAPPLICANT

versus

MAKACHA OGUTU 1ST RESPONDENT

SABASABA OGUTU 2ND RESPONDENT

RULING

2nd & 15th September, 2021

RUMANYIKA, J.:

With respect to judgment and decree of 29/04/2021 of Sengerema district court (the lower court), the application for extension of time within which Kayora Senyange (the applicant) to lodge an appeal is brought under Section 2(3) of the Judicature and Application of Laws Act Cap 358 RE. 2019. It is supported by affidavit of Kayora Senyange whose contents Mr. Emmanuel John learned counsel adopted during audio teleconference hearing on 2/9/2021. Mr. Samwel Mahuma learned counsel appeared for Makacha Ogutu and Sabasaba Ogutu (the respondents). I heard the parties through mobile numbers 0620 692 076 and 0765 485 262 respectively.

In a nutshell, Mr. Emmanuel John learned counsel submitted that the reasons for delay were; (i) that the applicant had fallen sick of hypertension (as per copy of the medical chit) until 15/07/2021 when he was ok, he engage Emmanuel John learned counsel who, on that behalf took up the matter. That is all.

Having adopted contents of the counter affidavit, Mr. S. Mahuma learned counsel submitted that there was lapse of 66 days far beyond the time limit but the applicant did not account for each day of the delay that one should have explained how he was prevented from taking such necessary steps (case of **Shembilu Shefaya v. Omary Ally** (1992) TLR 245 (CA). That if anything, as outpatient one was only occupied on 20/5/2021 therefore the applicant had not shown sufficient grounds. That is all.

The central issue is whether the applicant has shown good cause and sufficient grounds for extension of time.

The hypertensive applicant may have had been attended, diagnosed and as such he had the case established on 20/5/2021 (copy of the medical chit issued by Mwananchi Hospital appended to the application)

yes, but the medical chit wasn't admission/ discharge card or its equivalence nor did it tell that the applicant was even for a single day exempted from duty much as it was common knowledge that very often than not, once hypertensive a patient was established unless he was declared bed ridden for him medication was life time and that one was not an automatic excuse from duty. After all like Mr. S. Mahuma learned counsel correctly so submitted, if anything the applicant was occupied only on 20/5/2021. It means therefore from there the applicant had 20 days before but he took no necessary steps.

Moreover, even where, if at all he recovered on or by 15/7/2021 and he engaged the lawyer, applicant did not lodge the instant application until 2/8/2021 say another 16 good days later without explanation. It is settled principle of law that however slight the delay might be the applicant should have given account of each day of the delay (case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (CA)) unreported. Much as I would agree with Mr. Emmanuel John learned counsel that the applicant may have had been indisposed for a couple of days and even where he was ok it took him days to look for legal service yes, but however

generous and activist might no court of law can assume, or on behalf and for the parties give account for days.

The devoid of merits application is dismissed with costs. It is so ordered.

Right of appeal is explained.



S. M. RUMANYIKA

JUDGE

14/09/2020

The ruling is delivered under my hand and seal of the court in chambers this 15th September, 2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

15/09/2020