

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA**

AT MUSOMA

MISC. CIVIL APPLICATION NO. 28 OF 2021

**PAULO WILLIAM APPLICANT
*VERSUS***

LEONARD MAICO RESPONDENT

***(Application for extension of time to appeal from decision of the
District Court of Tarime at Tarime in Civil Appeal No. 4 of 2020)***

RULING

9th and 13th September, 2021

KISANYA, J.:

This is an application for extension of time which to appeal out of time against the decision of the District Court of Tarime at Tarime in Civil Appeal No. 4 of 2020. It is predicated under section 25(1)(b) of the Magistrates Courts Act [Cap. 11, R.E. 2019] (the MCA) and section 14(1) of the Law of Limitation Act [Cap. 89, R.E. 2019]. In support of the application is an affidavit sworn by the applicant, Paulo William, on 11th May, 2021.

Briefly, on 22nd January, 2021, the applicant lost in favour of the respondent, Leonard Maico, Civil Appeal No. 4 of 2020 which was before the District Court of Tarime. Aggrieved, he initiated the process of appealing to this Court. He did so by first applying for a copy of judgment, on 26th

January, 2021. According to the supporting affidavit, the copy of judgment was ready for collection and supplied to him on 23rd February, 2021. Thereafter, he filed a petition of appeal on 3rd March, 2021. However, on 14th April, 2021, this Court struck out the said appeal for being lodged out of time. Still determined to challenge the decision of the District Court of Tarime, the applicant has moved this Court to be pleased to grant him leave to appeal out of time. His application was filed on 12th May, 2021.

Upon being served, the respondent, filed a counter affidavit to contest the application. He deposed, among others, that the applicant had not accounted for the delay from the date of decision of this Court striking out his appeal to the time when the date of lodging the present application.

At the hearing of the application both parties appeared in person, unrepresented.

When the applicant was called upon to submit in support of the application, he reiterated what had been averred in the supporting affidavit. He stated that the delay was caused by the District Court delaying to give him the copy of judgment. The applicant was of the view that he had accounted for each day of delay and urged me to grant him leave to appeal out of time.

In his reply submission, the respondent prayed to adopt the counter-affidavit as part of his submission. He went on to contend that the applicant had not advanced a good cause for the delay. He contended further that each day of delay had not been accounted for by the applicant. Therefore, the respondent implored me to dismiss the application for want of merit.

Rejoining, the applicant reiterated that it is the District Court which attributed for the delay by failing to supply him with the copy of judgment in time.

It is common ground that the facts giving rise to the application at hand are not disputed. The issue for consideration is whether the application is meritorious or otherwise. This issue is resolved by revisiting at the law governing extension of time. Since the decision subject to this matter has its genesis from the primary court, the applicable provision is section 25(1) (b) of the Magistrate Courts Act [Cap. 11, R.E. 2019). In terms of that provision, the time within which to appeal against the decision of the District Court in the exercise of its appellate jurisdiction is thirty (30) days after the impugned decision. The same provision empowers this Court to extend the time for filing an appeal either before or after such period of thirty days has expired.

The above cited provision does state the factors to be considered by the Court in granting or refusing to grant the leave to appeal out of time. Case law endeavored to outline some reasons or factors, which may not be exhaustive. These are the length of the delay and whether it has been explained away; diligence on the part of the applicant as opposed to negligence or sloppiness; and whether or not there is an illegality in the decision sought to be challenged. See for instance, the cases of **Tanga Cement Company Limited vs. Jumanne Masangwa and Amos A. Mwalwanda**, Civil Application No.6 of 2001 and **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (both unreported).

In this case, I will just take a look at the length of delay and whether the delay has been explained away by the applicant. In so doing, I will consider the facts averred in the supporting affidavit. There is a plethora of authorities of this Court and the Court of Appeal which embrace the view that failure by an applicant to explain away each day of delay will not prompt the Court to grant the extension of time. See the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, (unreported) where the Court of Appeal held that:-

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

As hinted earlier, the applicant has advanced one ground for the delay. He deposed that the District Court delayed to supply him with the copy of the judgment to be challenged. He averred and proved that the copy of judgment was supplied to him on 26th February, 2021. Seven (7) days later, on 3rd March, 2021, he lodged the appeal which was struck out for being time barred. Although, it is not a legal requirement to append the copy of judgment to petition of appeal against the matter which originates from the primary court, I am of the view that the delay in obtaining the said copy may constitute to a good or sufficient cause. I hold so due to the fact that the appellant or his/her counsel may be in a good position of composing the grounds of appeal after going through the judgment. Therefore, the applicant has accounted for the delay up 14th April, 2021 when his appeal was struck out for being time barred.

However, as rightly deposed by the respondent, the applicant had not accounted at all for delay after the date of striking out his appeal (14th April, 2021) to the date of lodging the application at hand (12th May, 2021). In other words, there are 28 days of delay which have not been explained away by the applicant. Since he was aware and informed on 14th April, 2021 that

his appeal was time barred he ought to have been prompt to take the appropriate recourse. It is not known as to why he it took him the said 28 days to lodge the present application. In the premises the applicant is not entitled to be granted the extension of time sought because he has not accounted for delay of 28 days.

Ultimately, the application is hereby dismissed for want of merits. I make no order as to costs because the respondent did not press for it


DATED at MUSOMA this 13th day of September, 2021.




E. S. Kisanya
JUDGE

Court: Ruling delivered through teleconference this 13th day of September, 2021 in the appearance of the applicant and the respondent.




E. S. Kisanya
JUDGE
13/09/2021