

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

**MISC. CIVIL APPLICATION No. 107 OF 2021**

*(Arising from the High Court Civil Appeal No.14 of 2020)*

**KIKUNDI CHA NZENGO HALWEGO ----- APPLICANT**

**VERSUS**

**HOSEA OBEDI ----- RESPONDENT**

**RULING**

*Last Order date: 24.09.2021*

*Ruling Date: 28.09.2021*

**M. MNYUKWA, J.**

By way of chamber summons, the applicant KIKUNDI CHA NZENGO HALWEGO applied to this Court for an order for extension of time to file an application on the certification of the point of law against the judgment of this Court Civil Appeal No 14 of 2021 before Rumanyika, J. delivered on 30.06.2021. The application is preferred to this Court under section 11(i) of the Appellate Jurisdiction Act [Cap.141 RE: 2019] and rule 46(1) and 47 of the Tanzania Court of Appeal rules supported by the affidavit



sworn by Kuboja Mgusi, the sworn representative of the Kikundi cha Nzengo Halwego, the applicant.

According to the records, the facts of the application is briefly that, the application emanates from the decision of Ukerewe primary court in Civil Case No. 04 of 2020 and the second decree in the District Court of Ukerewe. The respondent in this application appealed before this Court in Civil Appeal No. 14 of 2020 and he won the case as per the decision delivered on 30.06.2021. Dissatisfied, and find himself out of time, the applicant through his representative one Kuboja Mgusi filed his chamber application fronted with two reliefs to include: -

- (i) That this honorable court be pleased to extend period to enable the applicant to lodge an application on certification of point of law in order to appeal to the Court of Appeal of Tanzania against the judgment of this court in Civil Appeal No. 14 of 2020.
- (ii) Costs may be provided to be in cause.

The matter was argued orally through audio teleconference where parties were remotely present on 24.09.20121. The applicant was represented by Kuboja Mgusi vide mobile No. 0769599246 and the



respondent managed the services of Ms. Leticia Lugakingira learned advocate vide mobile No. 0766022673.

Submitting on the application, the applicant avows that he got the copy of the judgment on 30.07.2021 and delayed to file an application on certification on the point of law. He claims to have filed the Notice of Appeal to the High Court on 17.07.2021 the time when he was not yet served with the copy of the judgment. He, therefore, prays the court to grant the application.

Responding to the submissions, Mis. Leticia Lugakingira learned advocate objected to the applicant's application for the reasons that the copy was ready from 30.06.2021 as against the claim by the applicant that he received the copy on 30.07.2021 upon his application on 14.07.2021. The counsel of the respondent avers that she was informed to collect the judgment and she also assumed that the applicant was contacted and if at all was not, she insisted that she could have been supplied with the copy on 14.07.2021 when he applied to be served since the copies were ready for circulation since 30.06.2021. Referring to section 45(a) of the Appellate Jurisdiction Act, it is the requirement for the leave to be filed within 30 days from the date the judgment was delivered.



She insisted that the applicant has not supported his application with legal reasoning and, she expected the application to contains the point of law for the court to make its determination as to whether to grant or dismiss the application. Supporting her argument, she cited the case of **Zaina Salum vs Michael Masanya Kimaro** Misc. Application No. 885 of 2018 HC DSM (unreported). She insisted that the point of law to be accompanied with the application for extension of time. She prays this court to dismiss the application with costs.

The parties in this application have taken sharply contrasting positions as while the applicant submits that there is good cause to allow the application, the respondent contending that no good cause has been fronted so this application be dismissed. Being so, and that the law is settled for an extension of time to be granted, the applicant must show the good cause for the court to exercise its discretion (see: **Tanzania Bureau of Standards vs Anitha Kavera Maro, Civil Application No. 60/18 of 2017**) And, also following the good cause for delay, the applicant must account for each day of delay (see: **The Registered Trustee of BAKWATA vs The Registered Trustee of Dodoma General Muslim Association** Civil Application No. 512/03 of 2019).



Given the above position of the settled law, the issue here is whether the applicant has managed to show a good cause and account for every day of delay to convince this Court to exercise its discretion to grant the application for extension of time sought.

The applicant's explanation was to the extent that the court decision was delivered in absence of both parties on 30.06.2021 and applied for the same on 14.07.2021 when he filed a notice of appeal and he was served with the copy of judgement on 30.07.2021. There was no explanation from the applicant why he delayed to collect the copy of judgement while the respondent collected hers on 1/7/2021.

The time started to run from 1/07/2021 to 30.07.2021 within which an applicant was required to file his application to the day this application was filed which on records, shows that the application was filed on 20.08.2021 which equals to 20 days of delay.

First, as to whether there was a good cause fronted by the applicant, I went to the submissions and to his sworn affidavit, it is without doubt that, the date when the decision was granted, both parties were absent. Upon going through the records, I find his attached letter requesting to be supplied with a copy of judgement dated and filed on 14.07.2021. His oral submissions and his sworn affidavit specifically on paragraph 5



indicated that he received the certified copies on 30.07.2021. On the other hand, the respondent in his sworn testimony under paragraph 3 he stated that, on 30/06/2021 her advocate received a call from the bench clerk of Hon. Rumanyika J, to come and collect the copy of judgement. It does not sound good to me this Court to made a call to the respondent without notified the applicant.

The applicant did not tell this Court whether he had received a call from the bench clerk of Hon. Rumanyika or not. Again the records are silent if he made any follow up before requesting to be supplied with a copy of judgement through his letter dated 14/07/2021. It is my view that the applicant decided to choose his own date to collect the copy of judgment. So long as the applicant intended to appeal against the decision, it was expected to collect the copy of the judgement on the very date the decision was delivered.

For that reason, I agree with the respondent that the applicant failed to advance sufficient cause why his application for an extension of time to be granted.

Second, as to whether the applicant managed to account for each day of delay to trigger this Court to exercise its discretion. For the proper records, time-lapsed the very date the applicant claimed to have been





served with the certified copies on 30.07.2021 and to the date this application was filed that is on 20.08.2021, makes 20 days that the applicant must account for his application to be granted. In his submissions, the applicant was brief but the reason for his delay can be drawn from paragraph 6 of his sworn affidavit and I find obliged to reproduce it here as it reads:

*"That, I could not file the said application in time because from the 30<sup>th</sup> July 2021 when I received one copy of the Judgment, I had to look for funds to pay the advocate who has to prepare the necessary documents."*

The applicant holds that he faced financial constraints which resulted to failure to lodge the application on time. It is a general rule as stated in the case of **Zabitis Kawuka vs Abdul Karim** (EACA) Civil Appeal No. 18 of 1937, that financial constraints are not sufficient grounds for the extension of time. But based in the holding in the case of **Yusuph Same and Another vs. Hadija Yusuph** Civil Appeal No. 01 2002 (unreported) which was also quoted with authority in the case of **Constantine Victor John vs Muhimbili National Hospital**, Civil Application No. 214/18 of 2020 that there are circumstances where financial constraints may be sufficient grounds for the extension of time. What was found as exceptional in the above-cited cases that the applicant



was facing financial constraints and was the same placed under legal aid, did not feature in the application at hand. Much as I have stated above, the application fronted reason of financial constraints is left with no explanation and justification as to what extent and for how long he was financially unstable taking into account that he was a sworn representative, which could give this court a point of consideration. For that failure, the application is shot of merit and therefore fails.

In our case at hand, the applicant did not account for each day of delay rather, he generalized the reasons to mean that he was looking for funds to pay the advocate from the day he received the certified copy of the judgment to the date he filed the same. I find that, the case at hand do not fall to the exceptions as held in the two cited cases above for the applicant did not manage to show the exceptional circumstances that uphold his reason. Going to the records, the representative Kuboja Mgusi represented the applicant (community-based group) and as a representative, he did not show how the group was informed and failed to financially assist him in filing the application on their behalf within time.

It is a settled principle that for an application of extension of time to be granted, the applicant should account for each day of delay, even a single day has to be accounted for. See the cases of **Tanzania Fish**





**Processors Limited vs Eusto K Ntagalinda**, Civil Application No 41/08 of 2018, CAT at Mwanza, **Dar es Salam City Council vs Group Security Co. Ltd**, Civil Application No 234 of 2015, CAT at DSM and **Juma Shomari vs Kabwere Mambo**, Civil Application No 330/17 of 2020 (Both unreported)

In the upshot, I find the applicant had failed to show good cause and to account for each day of delay for this application to be granted. Thus, this application has no merit and it is hereby dismissed. No order as to costs.



**M. MNYUKWA**

**JUDGE**

**28/09/2021**

Ruling delivered on 28/09/2021 via audio teleconference whereby all parties were remotely present.



**M. MNYUKWA**

**JUDGE**

**28/09/2021**

