

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA – SUB REGISTRY

AT MUSOMA

MISC. CIVIL APPLICATION NO 24 OF 2021

*(Arising from Misc. Civil Application No. 56 of 2020, PC Civil Appeal No. 40 of 2020
in the High Court of Tanzania at Musoma)*

PIUS FELIX SIZA APPLICANT

VERSUS

HAMAD M. EKINGO RESPONDENT

RULING

7th Sept and 27th Sept, 2021

F. H. MAHIMBALI, J.:

Aggrieved by the decision of honourable Z. N. Galeba J (a. h. w) in PC Civil Appeal No. 4 of 2020 dated 7th August 2020, the applicant herein lodged his Notice of Appeal to CAT on 24th August, 2020.

It appears that just after filing the Notice of Appeal to CAT, the Applicant relaxed or failed to take other appropriate legal course for certification on point of law timely.

By his chamber application dated 17th May, 2021 the applicant under section 11 of the Appellate Jurisdiction Act, Cap 141 R, E, 2019 has filed this application seeking for the following orders:

- a) This Court be pleased to extend time for filing an application for certification of point of law.*
- b) Costs of the application to be in the due course.*
- c) Any other order this Honourable Court may deem equitable fit and just to grant. The said application is dated 17th May, 2021.*

In support of his chamber application, the applicant deponed in his affidavit as follows:

- 1. That I am the applicant in instant application and thus conversant with the facts to be deponed here in.*
- 2. That I lost my appeal against the respondent, however, I was dissatisfied with that finding and that am desirous to appeal against it. I have filed the Notice of appeal to that effect. I attached copy of Notice of Appeal as annexure "A" forming part of this affidavit.*
- 3. That after losing the appeal before Hon. Z. N. Galeba, J I failed to take the necessary legal steps to file an application for extension of time.*
- 4. That in November, 2020 my father who is 90 years of the age was suffering and taken to Mkura Hospital in Simiyu Region for treatment but he died after three days and cause the applicant failed to file the application within the time.*

5. *That on 15th day of April 2021, Honourable E. S. Kisanya, J dismissed my application in the reason that I filed the application out of time.*
6. *That I am the layman person who failed to make sure that I am supposed to file the application within 30 days from the date of judgment*
7. *That before this Court I pray to be given leave to file the application out of time.*

During the hearing of the application, the parties fended themselves. Whereas the applicant submitted that his affidavit be adopted as part of his submission, he further added that his application be allowed so that he can file an application on certification on point of law to contest against the judgment of the High Court to the Court of Appeal.

On the other hand, the Respondent despite the fact that he had not filed his counter affidavit on reason of being served late, he however countered the application for being un-meritorious. He challenged, if the said applicant's father is dead as per paragraph 4 of the Applicant's affidavit. To his knowledge the said person is alive and fine.

In the same venue, he inquired if the said deceased really died as deponed there is no proof of the said fact by certificate.

In his conclusion, he submitted that the application is frivolous and thus must be dismissed with costs as there are no good reasons advanced to warrant the application granted.

In his rejoinder, the applicant admitted that for sure the person who died is not his father but uncle (brother of his father). He however, reiterated his submission in chief and prayed that his application be allowed.

Since an extension of time is not absolute right, it is upon judicial discretion which has to be exercised judiciously. However, to do so there must be accounted reasons for that. In **Mbogo Vs. Shah (1968) EA** the defunct Court of Appeal for Eastern Africa held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."

The only known acceptable ground for an application on extension of time to be granted is the party seeking for it to establish "*good and reasonable cause*". This was held in the case of **KALUNGA AND COMPANY ADVOCATES VS NATIONAL BANK OF COMMERCE LIMITED** [2006] TLR 235 at page 235 where the Court of Appeal states;

(i) ...the court has a wide discretion to extend time where the time has already expired, 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."

It is settled that what amounts to sufficient cause is not clearly defined. In **TANGA CEMENT COMPANY LIMITED VS MASANGA AND AMOS A. MWALWANDA**, Civil application No.6 of 2001 it was held;

"What amounts to sufficient cause had not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant."

However, there are factors that are used to determine whether the applicant has shown good and reasonable cause such as the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant and whether there is an illegality in the impugned decision. The above factors were also stated in the famous case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). In addition, the

applicant has to account for each day of delay.

In the case of **Charles Pantaleo Kingoka Vs. Abasa Musa Kitoi – Civil Application no.71/76 of 2019**, the Court of Appeal said:

"There must be an account of each day of delay. Delay even of a single day, has to be accounted for"

In **Selemani Juma Massala Vs. Sylvester Paul Mosha & Japhet Matiku Lyoba – Civil Application no. 210 of/01 of 2017** – unreported, the Court of Appeal stated at page 11.

"The settled position of the law is that, if there is a delay of any act, then each day of the delay has to be accounted for. Otherwise, there was no need of having such rules"

In the case at hand, the applicant's main reasons for extension of time are that his father had died. The applicant failed to establish as to when exactly did the said father die and how that death prevented him from filing the said application timely. The applicant has not stated in his affidavit as exactly when then was he in a proper position of filing this application after all factors had been settled. So far, there are no evidence in court record annexed with his affidavit to substantiate the true account of death of his father. Since the court records establish that his appeal at the High Court was dismissed on 29th June, 2020, it was

expected from him that he accounts for each day of delay after the expiration of the 30 days after lodging his notice of appeal to Court of Appeal.

From his reasons, it is my humble view that he has not sufficiently accounted for each day of delay as per law. As the judgment of the High Court was issued on 29th June, 2020, and his earlier attempt application was filed on 17th, November 2020 (but struck out on 15th April, 2021) in law, he was first supposed to account for each day delay from 28th day of July, 2020 to 16th of November 2020. What was he doing in between to make him fail to file his application timely? Gathering from his affidavit, he has not accounted sufficiently for those delayed days as legally required. Worse enough, the affidavit does not state what illegality would be tabled before the Court of Appeal for its determination. In the absence of illegality coupled with an unaccounted days of his delay in filing the application, the application stands legally speaking unqualified for consideration.

That he is a lay man, has never been an accepted ground for extension of time (***Ngao Godwin Losero (Civil Application No. 10 of 2015)***).

In fine, this application is dismissed for want of merits with costs.

It is so ordered.

DATED at MUSOMA this 27th day of September, 2021.




F. H. Mahimbali

JUDGE

27/09/2021

Court: Ruling delivered this 27th day of September, 2021 in the presence of the Appellant and in the absence of Respondent and Miss Neema P. Likuga – RMA.


F. H. Mahimbali

JUDGE

27/09/2021