

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB - REGISTRY

AT MUSOMA

PC. CIVIL APPEAL NO. 13 OF 2021

(Arising from Civil Application No. 19 of 2020 originating from

Civil Case No. 1 of 2020 Mugeta Primary Court.)

KADOGO MAMBINA APPELLANT

VERSUS

JUMA MAMBINA RESPONDENT

JUDGMENT

30/8 & 27/09/2021

F.H.MAHIMBALI, J.

Aggrieved by the decision of Primary Court of Bunda District at Mugeta, the appellant wished to appeal against it at the District Court of Bunda but she found herself being out of time. She thus unsuccessfully filed an application for extension of time to file appeal of out of time at the District Court of Bunda.

Not amused, she is challenging the decision of Bunda District Court to this court against the refusal order to grant the extension of time. The appellant has filed a total of three grounds of appeal in this petition of appeal namely: -

- 1. That, the trial court erred in law and in facts for dismissing Misc. Application No. 19 of 2020 on legal technicalities without considering a letter dated 5/3/2020 filed at the trial court requesting copy of judgment while appellant had sufficient reason for delay. Copy of the letter dated 5/3/2020 is attached ML1.*
- 2. That, the trial court erred in law and in facts for disregarding submission of the appellant in regard to the delay for lodging appeal to the trial court.*
- 3. That the trial court ignored the irregularities in the judgment delivered by Mugeta Primary Court as the same was handled to Appellant without signature of the trial magistrate. Copy of judgment is attached ML2*

During the hearing of the appeal, both parties fended for themselves as none had a legal representation.

The appellant on his side submitted that he had no more to add to her grounds of appeal as they were sufficient. She thus prayed that the same be adopted by the court to form part of her submission as trial court erroneously considered her application.

On the other hand, the respondent in reply to the grounds of appeal, also prayed that what he filed in reply to the grounds of appeal also be adopted as part his submission. He thus, insisted that this appeal

is out of place and lacks any merit the same be dismissed. Thus, the dismissal was proper course as per law. In essence, his reply to the grounds of appeal as filed in court, stipulate that the appellant had not advanced any sufficient and good cause to grant the extension of time as prayed. Secondly, the arguments of both parties were considered at the trial court (District Court), thus it is baseless argument. Lastly regarding the illegality, he submitted that there is none established by the appellant which needed the attention of the District Court.

Upon hearing the parties for this appeal, the vital question here is whether this appeal is meritorious for this court to allow.

It is clear that the appellant was supposed to appeal within 30 days after the impugned judgment or order of the Primary Court as per rule 3 **THE CIVIL PROCEDURE (APPEALS IN PROCEEDINGS ORIGINATING IN PRIMARY COURTS) RULES G.N. No. 312 of 1964**. Failure to comply with the above rule, one has to obtain extension of time from the court and extension of time is upon judicial discretion, thus she had to establish "a good and reasonable cause". The Law demands an application for extension of time to appeal out of time to a district court from a decision or order of a primary court, shall set out the reasons why a petition of appeal was not or cannot be filed

within thirty days after the date of the decision or order against which it is desired to appeal, and **shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order:**

Provided that where the application is to a district court, the court may permit the applicant to state his reasons orally and shall record the same.

This position was well articulated 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 amount to sufficient cause is not yet defined. See **TANGA CEMENT COMPANY LIMITED VS MASANGA AND AMOS A. MWALWANDA**, Civil application No.6 of 2001 where it 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 **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 instant case the appellant's reasons for extension of time are that she was waiting for the copy of judgment which she got it on 01/12/2020 while the judgment was delivered on 04/03/2020. Computing time from 1st December, 2020 to 17th December, 2020 they have passed 16 days to file her application for extension of time. Should annexing the said copies was mandatory as per law, the applicant has

yet not shown what prevented her to file her application timely after the said supply. That said, it is my candid view that she was waiting to be supplied with the copy of judgment, does not amount to good and sufficient cause in the circumstances of this case. This is because according to law there has not been a sufficient legal course accounting each of the delayed days in filing the said appeal. After all, according to the law governing filing of an appeal to district court does not need to accompany with the copies of judgment and proceedings. The form and content of petition of appeal for matters originating from the primary court are as stipulated under rule 4 of **THE CIVIL PROCEDURE (APPEALS IN PROCEEDINGS ORIGINATING IN PRIMARY COURTS) RULES G.N. No. 312 of 1964** which state;

*"Every petition of appeal to a district court from a decision or order of a primary court and every petition of appeal to the High court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction **shall set out precisely and under distinct heads numbered consecutively the grounds of objection** to the decision or order appealed against and shall be signed by the appellant or his agent."*

The argument that she had delayed filing the appeal because of delay in obtaining copies of judgment and proceedings suggests

ignorance of the law which defence is the weakest in our jurisdiction. It is settled law that ignorance of the law has never been a good reason for extension of time. This was provided for in the case of **Hamimu Hamisi Totoro @ Zungu Pablo and 2 others vs The Republic**, Criminal Application No. 121 of 128 at page 5 and 6 where it held;

*"The issue here is whether ignorance of the law constitutes a good cause for extension of time. There is a plethora of authorities to the effect that ignorance of law has never been a good cause for granting extension of time. For instance , in the case of **Hadija Adama v. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported) the court stated as follows: " As regards the applicant's ignorance of law and its attendant rule of procedure , I wish to briefly observe that such ignorance has never been accepted as a sufficient reason (see for instance , **Charles Machota Salugi v. Republic**, Criminal Application No. 3 of 2011 (unreported)*

Similar observation was made in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) in which the court stated that:

*"As has been held times out of number, Ignorance of the law has never featured as a good cause for extension of time (see , for instance , the unreported **ARS. Criminal Application No.4 of 2011 Bariki Israel vs The Republic** ; and **MZA**,*

Criminal Application No.3 OF 2011 – Charles Salugi vs The Republic). To say the least a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/ she will have nothing to offer as an excuse for sloppiness”

In that regard, her reason is bankrupt of merit and it is as well dismissed.

Lastly but certainly not least, I wanted to know whether there is any illegality to be addressed before the District Court in respect of the impugned decision, I have found none.

All said and done this appeal is devoid of merits and it is dismissed. Considering the consanguinity of the parties, I order no costs.

It is so ordered.

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




F. H. Mahimbali

JUDGE

27/09/2021

Court: Judgment delivered this 27th day of September, 2021 in the presence of both parties and Miss Neema Likuga – RMA.



F. H. Mahimbali

JUDGE

27/09/2021