

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

MISCELLANEOUS CIVIL APPLICATION No. 75 OF 2021

**(Arising from Misc. Civil Application No. 29 of 2021 at the High Court of
Tanzania, Hon. Mgeyekwa, J. dated 31st may 2021)**

PAULO JEREMIA.....APPLICANT

VERSUS

ELIAS JEREMIA.....RESPONDENT

RULING

28th & 30th September 2021.

TIGANGA, J.

Under the provisions of section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019] and any other enabling provision of the law, the applicant herein, through the services of the learned counsel Mr. Shekifu, has lodged this application by way of chamber summons in which two main orders are sought;

1. That the Honourable Court be pleased to grant the applicant extension of time within which to file his application for certificate on points of law to the Court of Appeal.
2. Any other orders this court deems fit and just to grant.

The application has been supported by an affidavit by the applicant himself stating the facts leading to this application.

The application has however been opposed by the respondent through his counter affidavit in which he basically stated that the applicant has not established good cause to be granted extension of time.

On the date the application was set for hearing, the applicant was represented by Mr. Shakifu, learned counsel whereas the respondent appeared in person.

In support of the application, learned counsel for the applicant stated that the applicant was the respondent in Civil Appeal No. 13 of 2020 before Hon. Manyanda, J which was determined in the applicant's disfavour thus he, in time, filed a notice of appeal and an application for certification on points of law which was later dismissed on 31st May 2021 after the applicant conceded the preliminary objection that the matter was bad in law for being prepared and filed by an unqualified person.

As for the issue of delay, counsel argued that the delay is not a normal delay but technical delay as the former application was filed in time but had to suffer a strike out order for being handled by an unqualified person. He submitted further by praying that since the applicant has shown the intention to prosecute his appeal, then the application be granted so that the family dispute can be heard on

merits. To strengthen his arguments, counsel cited the case of **Fortunatus Masha vs William Shija & Another**, [1997] TLR 154 where it was held that the courts should distinguish between actual delay and technical delay. He furthered his arguments by stating that once a matter has been struck out for contravening certain law or procedure, that matter can be filed again after rectifying the defect, and the grounds upon which the matter is struck out, ends there, and once rectified they used cannot be brought up when seeking to bring a new case or application.

He cited the case of **Bank M Tanzania Ltd vs Enock Mwakyusa**, Civil Application No. 520 of 2017 (unreported) stating that technical delay amounts to sufficient cause once the matter is brought promptly.

He prayed for the application to be granted as there was no negligence on the part of the applicant and that there is still a dispute between the parties.

Regarding the reasons for the delay, counsel submitted that he could not lodge the application in time because he was not supplied with a copy of the ruling. He was supplied with same one week after its delivery, thereafter they filed this application.

In the reply to the submission in chief, the respondent submitted that, the applicant was given only 21 days to lodge an application did not do so. According to him, he knew that the applicant did not lodge this application in time when he made follow up and found that there was no any application filed. He also submitted that, the advocate filed the application out of time because of negligence. He prayed for the application to be dismissed with costs.

In a very brief rejoinder, the counsel for the applicant stated that they were not given 21 days but rather were left at liberty to file a fresh application if they so wish. He prayed for the application be granted as prayed.

Having summarised the parties' submissions for and against the application, what I am called upon to determine is whether the applicant has managed to show sufficient cause to move this court to grant the extension of time for the applicant to file the intended application.

From the provision upon which this application has been preferred, it goes without saying that this court has powers to grant the application for extension of time upon good cause shown as held in the case of **Eliakim Swai and Frank Swai vs Tobias Karawa Shoo**, Civil Application No. 02 of 2016 CAT-Arusha, it was held *inter alia* that,

"...extension of time may only be granted upon the applicant showing good cause of delay."

In the same case the Court of Appeal of Tanzania held *inter alia* that,

"It is trite law that such decision is entirely in the discretion of the court to grant or refuse it. It is also trite that such discretion is judicial and so it has to be exercised according to the rules of reason and justice, and not according to private opinion, whimsical inclinations or arbitrarily"

Also see: **Yusufu Same & Anor v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 and **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, both unreported.

As to what amounts to sufficient or good cause, the statute is silent, but there is a plethora of case laws explaining the same, one of good example of those case authorities is the 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), CAT, the following guidelines were formulated in considering of what amounts to good cause:-

(a) The applicant must account for all days of the delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in prosecuting the action that he intends to take.

(d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."

Also see, **Regional Manager, TANROAOS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 and **Tanga Cement Company Limited v. Jumanne O. Massanga and Amos A. Mwalwanda**, Civil Application No.6 of 2001, (both unreported)

Further elucidating the concept the Court of Appeal in the case of **Attorney General vs Tanzania Ports Authority and Another**, Civil Application No. 87 of 2016 (unreported) that;

"What amounts to good cause includes whether the application has been brought promptly, absence of any invalid explanation for delay and negligence on the part of the applicant"

In this application the learned counsel for the applicant stated the reason for delay to be failure to be supplied with the copy of the ruling. However, upon perusal of the records it is shown that the said ruling

was dated and ready for collection on 31st May 2021. Even if this court chooses to believe that the applicant was supplied with a copy of the ruling one week after delivery that is on 07th June 2021, still the applicant has not explained what he was doing from 07th June 2021 until 16th June 2021 when he filed the instant application. This means about 9 days delayed which are counted from when the said ruling was supplied up to when the present application was filed have not been accounted for.

Furthermore according to the authorities cited herein above, in all applications of this nature, it is required that where there is illegalities in the decision sought to be challenged that amount to good cause for extension of time. The applicant has not pleaded on illegality of the decision sought to be challenged, and has failed to accounted for the days from when he allegedly got the copy of the ruling which he said he got seven days from the date of delivery, that is on 07th June, 2021, until on 16th June 2021 when the present application was filed which is approximately 9 days, have not been accounted for, which failure disentitles the applicant for an order for extension of time.

In the upshot, this court finds that, since the applicant has failed to give valid reasons for the delay, then it follows that he has not shown

good cause upon which this court can exercise its discretion to grant the prayers sought. This application is therefore dismissed with costs.

It is accordingly ordered.

DATED at MWANZA, this 30th September, 2021

J. C. TIGANGA

JUDGE

30/09/2021

This ruling delivered in the presence of Mr. Yona Shekifu, learned Counsel for the applicant, but in the absence of the respondent, on line vide audio teleconference.



J. C. TIGANGA

JUDGE

30/09/2021