

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**MISC. CIVIL APPLICATION NO. 35 OF 2021**

*(Arising from Bukoba District Court in Misc. Civil Application No. 31 of 2019 and Original from Bukoba Urban Primary Court in Civil Case No. 304 of 2018)*

**LEONS KITAMBI.....APPLICANT**

**VERSUS**

**DEOGRATIAS DONATUS KAIJAGE.....RESPONDENT**

**RULING**

*Date of Ruling: 29.09.2021*

*Mwenda, J*

This is an application for extension of time to register an appeal out of time. It arises from the decision of Bukoba District Court at Bukoba in Misc. Civil Application No. 31 of 2019 dated 24<sup>th</sup> December 2019.

When this application was scheduled for hearing both parties enjoyed the legal service of learned counsels. Mr. Ibrahimu Muswadick for the applicant and Miss Erieth Barnabas for the respondent.

Mr. Muswadicki, learned Advocate for the applicant commenced by praying the applicant's affidavit to be adopted as part to their submission.

He said this application originates from PC. Civil Case No. 304 of 2018 and is brought under Rule 3 of Civil Procedure (Appeal in proceedings originating in

Primary Court) Rules, GN. No 312 of 1984 and Rule 3 (4) of Magistrate's Court (Limitation of proceedings under customary Law) Rules GN. No 311 of 1964. He said Rule 3 (4) of this GN. No. 312 deals with extension of time upon sufficient cause being advanced after expiry of period of Limitation of time.

The learned advocate further submitted that the applicant was also the applicant in Civil Revision No. 04 of 2020 before this court. The respondent sued the applicant before Bukoba Urban Primary Court, PC. Civil Case No. 304 of 2018 which ended in his favour on 22<sup>nd</sup> day January 2019. Five days after the judgment the applicant travelled to Dar es salaam to take care of his sick brother where he spent almost 4 months. The learned advocate referred this court to annexed as LK.1, bus return tickets.

Mr. Muswadik submitted that after the said judgment, the applicant did not file his appeal timely as the Magistrate supplied a copy on 14/02/2019. He made reference to (Annexed LK 2) in support thereof.

He added that the applicant on his way back from to Bukoba sustained leg injury as a result he had to attend serious medical treatment which began on 1<sup>st</sup> day of June, 2019 to 30/8/2019 .He referred this court to medical chit of Kamezi outpatient record marked LK – 3.

He said although the applicant was aggrieved by the decision of Primary Court he discovered that he was already time barred and he sought extension of time to appeal out of time before District Court of Bukoba vide Misc. Civil Application

No. 31 of 2019 where he (the applicant) lost. Being aggrieved by that decision he filed Civil Revision No. 4 of 2020 which was struck out on grounds that the affidavit contained extraneous matters (LK. 5)

The learned advocate submitted that from 24/12/2019 to 27/03/2021 the applicant has been prosecuting Civil Revision No. 4 of 2020 in this court which form matters arising in the same transaction.

He said the delay of 10 days from the date of receipt of the order of this court striking out Civil Revision No. 4 of 2021, includes weekends plus the days spent on drafting the relevant documents. He said since they were not furnished with the order timely, therefore their 10 days count started from a date of receipt of the said order.

The learned advocate submitted that there are chances of success if this application is allowed and grant of extension of time will not prejudice the respondent. He reiterated further that with regard to paragraph 6 of the applicant's affidavit they are aware that there is no legal requirement that a copy of judgment shall be attached to the petition of appeal from Primary Court to District Court but they secured a copy of impugned judgment first in order to be used in preparation of the grounds of appeal. He said the applicant being a lay person expected to handle the said copy to a lawyer for drafting of the necessary document but could not get it timely.

He said there are authorities that if the applicant is prosecuting matters which arise in the same transaction that time shall be excluded in counting delays. He also cited the case of **Elibarik Asseri Nnko vs. Shifaya Mushii and Lewanga Kinondo** [[1998] TLR, 80 and **Zabibu Mariki vs. Acquiline Emmanuel Land Application No. 38 of 2019 (unreported)** in that the applicant has shown due diligence as he has been in this court's corridors pursuing his rights from 24/12/2019 – 27/5/2021. He thus concluded by prayers that this application be granted to lodge application out of time to challenge District Court decision which declined extension of time to file an appeal.

In reply to the submissions by the advocate for the applicant, Ms. Erieth, learned advocate submitted that after they were served with this application they filed counter affidavit sworn by Advocate John Erasto and she prayed it to be adopted to form part of their submissions.

Ms. Erieth submitted that they are opposing the contents paragraph 5 of the applicant's affidavit because immediately after the judgment in a **Civil Case No. 304/2018**, he was involved at **Civil Application No. 9/2019** before Bukoba Urban Primary Court which was filed by his relative (an objector) whose judgment was annexed in their counter affidavit. Further, she submitted that the applicant brought receipts purporting that he travelled but there is no proof that his brother was sick. She said the applicant did not act responsibly and decided to deal with his other issues. She also said the said bus tickets (LK.1) are questionable as the one from Bukoba to Dar es salaam shows it was issued

on 27/9/2019 and that the applicant travelled on 27/01/2019. She said this shows the applicant travelled 9 months before being issued a bus ticket to her this create doubts. In support thereof she cited the case of ***Ignesio Masine vs. Willo Investment SPR Civil Application No. 21/2001 Court of Appeal of Tanzania (unreported)*** where it was held that:

***"an affidavit tainted with untruth is no affidavit at all and cannot be reached upon to support an application the assistance the court can give in such a situation out the affidavit".***

Ms. Erieth further submitted that with regard to paragraph 6 of the affidavit that the copy of judgment was certified on 14/2/2019 from judgment read on 22/1/2019 and therefore a delay, this also raises doubt as this period is when he alleged he was out of Bukoba. She also said that he has not stated as to when exactly did he receive the said copy of judgment.

Further she said the applicant alleged that he made a follow up of the copy of judgment before travelling to Dar es salaam but there is no proof to that effect.

Ms Eriet further submitted that in order to be granted extension of time the applicant was required to account for each and every day of delay. In support that argument she cited a case of **Tanzania Harbours Authority (THA) vs. Mohamed R. Mohamed (2003) TLR 76** where it was held that:

***"the court is duty bound to see rules of the court are observed strictly and cannot aid a party who deliberates commits lapses because to do as in the present case, would defeat the whole reasoning behind amending the civil procedure rule, 1984."***  
**(emphasis is overs).**

On submission by the learned advocate for the applicant that the applicant sustained leg injuries and started treatment from 1/6/2019.– 30/08/2019 Ms Erieth submitted the Hospital chit LK. 3 raises doubt because, it shows he got treatment and was attending at the hospital on and off but lastly it shows he was discharged. She said if he was attending on and off why would he be discharged.

Ms Erieth submitted that the applicant filed for leave of extension of time just to interfere with execution of Decree in Civil Case No. 304/2018 of Bukoba Urban Primary Court. With regard to the purported 10 days delay that it includes weekly days plus drafting the instant document she said on weekly days he ought to have lodged his application.

She concluded by stating that the respondent's delay is due to his negligence and he failed to advance good reasons and prayed this application to be dismissed with costs.

In rejoinder Mr. Muswadicki, learned advocate for the applicant stated that the applicant was not given a copy of judgment so that he could handle it to the advocate to prepare grounds of appeal on his behalf before travelling to Dar es salaam. With regard to bus tickets of a trip from Dar es salaam to Bukoba showing doubts on the date of issuance versus travelling date, he said that seem to be clerical error which is curable in the eyes of law and the argument that it was prepared before travelling is unfounded.

With regarding to arguments that the applicant lied with regards to bus tickets Mr. Muswadick submitted that the respondent had to file counter affidavit and since it was filed long before then he ought to have gone at the transporter's office to inquire on its correctness of the dates.

With regard to medical chits showing the applicant was outpatient he said that, for someone with serious injury, the term discharge does not mean a complete recovery. Even for outpatient there are period when they are discharged and he added that the learned advocate ought to have taken trouble to make a follow up in the said hospital.

He concluded by stating that the case of Tanzania Harbours Authority (supra) is distinguishable in that the Civil Procedure Code, [Cap 33 RE 2019] does not apply in this application and he prayed this court to consider their application judiciously.

After going through the submissions by both parties this court came up with only one issue for determination which is whether the applicant has advanced sufficient cause to be granted extension of time to appeal out of time.

During his submissions the learned counsel for the applicant submitted that, their delay is only for ten (10) days that is from the date they received the copy of the order in Civil Revision No. 04 of 2020 to the date of filing the present application that is Misc. Civil Application No. 35 of 2021. According to him the reasons for delay for the said ten days includes weekends and days spent in drafting and filing the present application.

The practice of this court and our superior court has been that applicants for enlargement of time are required to adduce sufficient reasons and account on every day of the delay.

It was stated in the case of **Elemens Clemens vs Enock Karumuna Land Application No. 14 of 2019** High Court of Tanzania Bukoba Registry (unreported) that:

***"The accountability on gaps of delay is important as it gives this court an opportunity to gauge whether the registered materials in the gaps constitute sufficient reasons. That is why categories of sufficient reasons have never been closed to allow this court to exercise its***



*discretionary powers to decide in favour of sufficient reasons. Apart from gauging the materials, the need of accountability on days is important because of the law in limitation of time”.*

On top of that, the Court in the case of **Bashiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007**, stated that:

*“a delay of even a single day has to be accounted for”.*

The reasoning of such statement is found in the same decision in the following words:


*“there would be no point of having rules prescribing periods within which certain steps have to be taken”.*

This court is of the opinion that, the Applicant in the present application did not register good reasons as per established precedents of our superior court (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited Civil Application No. 116 of 2008**; **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene, Civil Application No. 518/4 of 2017**; and **NBC Limited and Another v. Bruno Vitus Swalo, Civil Application No. 139 of 2019**).

In the final analysis, the Applicant have failed to persuade this court to decide in his favor after failing to account on 10 days of delay. Therefore, leave for enlargement of time to file an appeal out of time is declined and his Application is hereby dismissed with costs.


It is so ordered.



  
A.Y. Mwenda  
**Judge**  
29.09.2021

Ruling delivered in chamber under the seal of this court in the absence of the applicant and in the presence of Mr. Deogratias Kaijage the respondent.



  
A.Y. Mwenda  
**Judge**  
29.09.2021