

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC CIVIL APPLICATION NO. 15 OF 2020

*(Originating from Civil Appeal No. 6/2020 from District Court of
Sumbawanga at Sumbawanga Original Civil Case No 39 of 2020 of
Sumbawanga Urban Primary Court.)*

TITO AUGUSTINOAPPLICANT

VERSUS

NOAH TITO SILWIMBA.....RESPONDENT

RULING

Date of Last Order: 11/10/2021

Date of Ruling: 25/11/2021

NDUNGURU, J.

This application has been preferred by the applicant under **section 20(4) of the Magistrate Court Act, Cap 11 RE 2002** seeking for this court to extend time for him to file an appeal out of time. The application is supported by the affidavit of the applicant, Tito Agustino.

When the application was called on for hearing, applicant appeared in person, unrepresented whilst respondent was represented by Mr. Ayoub Mwakalonge – learned advocate.

Arguing in support of the application, the applicant submitted that after being dissatisfied with the decision of the District Court delivered on 3rd of June 2021 two weeks later on 15th of June 2020, he felt sick and was admitted for three weeks (21) days. Then, he got discharged and he went to Mbeya for local treatment where he said it took a very long time. He came back on August 2020 where he prepared this application on September 2020.

In reply, Mr Mwakalonge, learned advocate for the respondent submitted that the applicant informed the court that after the decision he felt sick and was admitted. He further submitted that the medical document attached is quite different from what he was submitting. The medical report does not not show that he was admitted for 3 weeks, rather he went for treatment at one day be treated. Hence, there was no admission.

Further, Mr Mwakalonge submitted that from the date the applicant felt sick and got well on August, however the application was filed on 30th of September 2020. The applicant has not accounted for those days. The law is very clear that the applicant has to show sufficient cause. He cited to me

the case of Tamali Sailo Mwampyate vs Mohamed Ausi, Misc Land Application No. 7 of 2020 (HC).

Mr. Mwakalonge submitted that the applicant has failed to account for the days of delay from the date he was discharged which is only one day. he concluded that the applicant has failed to show sufficient cause. He prayed for the dismissal of the application with costs.

In rejoinder, the applicant submitted that he has attached the medical document showing that he was sick and the respondent counsel might not have read the document. He said his sickness was known to the respondent. Thus, he prayed for the application be allowed.

The question is whether the application before this court has merit.

It is now a cardinal principle of law that when the time has expired, there must be explanation or material upon which the court may exercise its discretion to extend it. This stance has been taken by this court and Court of Appeal in a number of decisions. See the case of **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. L.t.d; Civil Application No. 96 of 2007** CAT, (unreported), **Godwin Ndeweri and Karoli Ishengoma vs. Tanzania Indil Corporation (1995) TLR 200**

and **Republic vs. Yona Kaponda and 9 others (1985) TLR 84** and **Tanga Cement Company Limited v. Jumanne D. Massanga and another, Civil Application No. 6 of 2001.**

In this application before me, through the affidavit as sworn by Tito Agustino averred that the Judgement of the District Court of Sumbawanga was delivered on 18th of June 2020 and being aggrieved by the said Judgement he applied a copy of Judgement and he was supplied to him on the date he did not mention. He further averred that when he was preparing an appeal he got sick. However, he realized that the time to lodge an appeal has elapsed because of his sickness. He attached a copy of medical treatment with this application.

On other hand, the respondent in his counter affidavit strongly contested that the applicant did not state when he was supplied with the copies of Judgement. It was his further averment that failure by the applicant to file the appeal on time is due to reasons known to him and therefore the applicant is subjected to strict proof thereto.

Apart from above, learned advocate for the respondents averred that the applicant failed to account the reason for the delay every day from 23rd

day of December 2019 up to 11th day of June 2020, and also failed to account the reason for delay from 4th day of June 2020 up to 11th day of June 2020 when he filed this application.

Having perused the entire records of this application, it transpires to this court that, the applicant strongly asserted that his failure to file an appeal on time was due to sickness as he felt sick when in the process of filing an appeal and to substantiate, he attached a copy of medical certificate. My looking of the records, it shows that the District Court delivered its Judgement on 17th of June 2020 and the applicant filed this application on 30th of September 2020, almost 103 days has passed.

Nowhere in the affidavit, the applicant averred as to which date he was supplied with a copy of judgement and decree. Even, looking the said medical treatment document, the same does not depicts as when he was admitted and as well discharged. The treatment document attached to my view is not proper to support applicant's application.

Again, my further scrutiny reveals that the applicant negligently filed this application under the wrong provision of the law. Instead of filing under **Rule 3 of the Civil Procedure** (Appeals in Proceedings Originating

in Primary Courts) Rules G.N No. 312 of 1964, he preferred this application under **section 20 (4) of the Magistrate Court Act**, Cap 11 RE 2019, which is fatal.

It is well settled law that citing a wrong provision of the law or rule under which application is made renders the application incompetent as the court will not have been properly moved. See the case of **Nicholaus Hamisi & 1013 Others versus Tanzania Shoe Co Ltd** and **Tanzania Leather Associated industries**, Civil Application No. 5 of 2004; **National Bank of Commerce versus Sadrudin Meghji**, Civil Application No. 20 of 1997 CA, unreported; **Almas Iddie Mwinyi versus National Bank of Commerce and Another**, Civil Application No. 88 of 1998 CA, unreported.

With the above position, I am compelled to declare the application before me incompetent, thus deserves to be struck out. No application before the court on which to grant the extension of time.

At this juncture, even if the application was to be proper still, I have not been persuaded with the reason as advanced by the applicant as the same does not suffice as a sufficient cause for the court to grant extension

of time as prayed. The applicant has failed to account each day of delay for all 103 days he has failed to file the application. Thus, it is difficult for me to decide that sufficient cause has been established.

For the reason stated above, I find the application devoid of merit and the same is dismissed with costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

25/ 11/ 2021