

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC. CIVIL APPLICATION NO. 36 OF 2020

*(From Matrimonial Appeal No. 4 of 2014 of District Court of
Dodoma at Dodoma, Original Matrimonial Cause No. 26 of 2013
Makole Primary Court)*

SAMWEL ODAMA.....APPLICANT

VERSUS

PRISCA OURE.....RESPONDENT

RULING

Date of last order: 15.11.2021

Date of Ruling; 24.11.2021

A.J. Mambi, J.

This Ruling emanates from an application filed by the applicant. In his application supported by an Affidavit the applicants filed (**MISC. CIVIL APPLICATION NO. 36 OF 2020**) for an application for an extension of time to appeal out of time. In his application the applicant has prayed to this court to allow him to file appeal out of time against the decision made by the District Court. The application is supported by an affidavit where the applicant has stated his reasons for this delay.

In his submission, the applicant through his learned Counsel Mr Komba briefly submitted that he pray to adopt his affidavit which has grounds for the reasons. He argued that the applicant is seeking for an order for extension of time to appeal out of time against the decision of the District Court. The learned Counsel briefly submitted that the applicant has stated his grounds of appeal under para 4, 5 & 6 of the affidavit.

In response, the respondent Counsel Ms Neema Ahmed briefly submitted that the respondent does not agree with the application since there is no any sufficient ground. The respondent counsel submitted that she is aware that granting an extension of time is the discretion of this court but such discretion must be exercised judicially. She argued that the ruling to struck out the matter was made on 09/09/2020 but the applicant just stayed for a long time. She contended that the applicant must give sufficient reasons for his delay something which has not been disclosed by the applicant.

I have considerably perused the application supported by an affidavit. I have also keenly considered the submissions made by both parties to find out whether this application has merit or not. My findings will be based on determining the issue as to whether the applicant has advanced sufficient reasons for this Court to consider his application for an extension of time to file an appeal out of time.

In my considered view the main issue in this matter is whether the applicant has properly moved this court in his application and whether there are any good causes for his delay or not. I am aware that where any party seeks for an extension of time to file an appeal out of time he is required to advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law and case studies. In this regard, I wish to refer the decision of the Court of Appeal of Tanzania in **REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)**. The court in this case observed that;

“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.

This means that in determining an application for extension of time, the court has to determine if the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. This means that the court needs to consider an issue as to whether the applicant in his affidavit have disclosed good cause or sufficient reasons for delay. In other words, the court needs to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the

delay that is to shown such reasons were operated for all the period of delay.

Reference can also be made to the decision of the court in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 Court of Appeal of Tanzania at Dar es Salaam (Unreported) underscored that;

“Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

- (a) The length of the delay*
- (b) The reason of the delay – whether the delay was caused or contributed by the dilatory conduct of the applicant?*
- (c) Whether case such as whether there is a point of law or the illegality or otherwise of the decision sought to be challenged.”*

Worth also at this juncture referring the decision of the court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015** (Unreported) where it was held that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause...”

His affidavit (para 4,5 and 6) has clearly indicated that he had sufficient reasons for his delay. It is clear from the affidavit and other records that the applicant has clearly stated the

sufficient reasons for his delay. My perusal from the records also show that the applicant had once filed similar application in time but it was struck out for defectiveness of the affidavit and incompetency of an application. This means that the applicant had to correct his document. I agree with the respondent counsel that it took some time for the applicant to file his new application, however the reasons stated by the applicant in his affidavit are more convincing. In my view, the grounds under the affidavit were good causes and sufficient reasons for his delay. My perusal on the applicants' documents including his affidavit in line with his submission has found that the applicants have indicated reasonable or sufficient cause to enable this court to consider and grant his application. Indeed, the question as to what it amounts to "sufficient cause" was underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007**, where the court observed the following:-

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**"(emphasis supplied).*

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

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

Reference can also be made to the decision of Court of Appeal in **MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998** in which the court at **Page 425** held that

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the applicant" will not suffer any prejudice, an extension should be granted.

I am not in agreement with the respondent that the applicant have failed to show sufficient reasons for his delay. I agree with the applicant Counsel that the applicant has advanced and presented sufficient reasons for delay and the extent of such delay in his application and he has also indicated that there is a point to of law involved. I also wish to refer the Law of Limitation Act. The relevant provision is section 14 (1) of the Law of Limitation Act Cap.89 [R.E. 2019] which provides as follows:-

"14-(1) Notwithstanding the provisions of this Act, the court

may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for such execution of a decree, and **an application for such extension may be made** either before or after the expiry of the period of limitation prescribed for such appeal or application (emphasis mine)".

I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to file his appeal out of time.

The applicant shall file his application within 21 days from the date of this ruling.



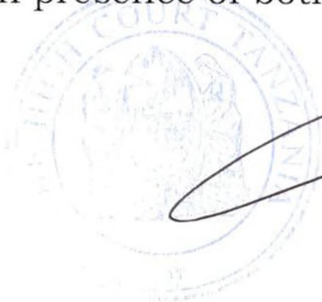
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A.J. MAMBI

JUDGE

24/11/2021

Ruling delivered in Chambers this 24th day of November, 2021 in presence of both parties.



A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke, is written over the judge's name and title.

A.J. MAMBI

JUDGE

24/11/2021

Right of appeal explained.



A.J. MAMBI

JUDGE

24/11/2021