

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF MTWARA)**  
**AT MTWARA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 20 OF 2021**

*(Arising from Mtwara Resident Magistrate Court in Criminal Case No. 45 of 2019)*

**ISMAIL SAID MPINI ..... 1<sup>ST</sup> APPLICANT**

**ZENA MOHAMED MFAUME ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

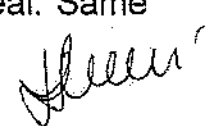
*Date of last order: 25/11/2021*

*Date of Ruling: 03/12/2021*

**RULING**

**MURUKE, J.**

The first and second applicant, were charged by respondent (The Republic) in the Resident Magistrate Court of Mtwara at Mtwara, for an offence of obtaining money by false pretense contrary to section 301 and 302 of the Penal Code, Cap 16 R:E 2002. They were found guilty and convicted by the same court, thus sentenced to pay fine of 1,000,000 Tsh each or being imprisoned for three years in default to pay fine. They were both ordered to refund 25,000,000 to the victim (PW1) within 7 months, from the date of decision 7<sup>th</sup> October 2020, same was to be paid by 30<sup>th</sup> June 2021. On 26<sup>th</sup> June being 4 days before deadline to pay, they filed an application for extension within which to file appeal. Same



was struck out on 30<sup>th</sup> July 2021 for being defective. They then filed present application on 09<sup>th</sup> August 2021.

Reasons for delay are as articulated at paragraphs 5,6,7 and 8 of applicant affidavit supporting prayers in chamber summons. Respondent filed counter affidavit to refuse contents of applicants' affidavit requiring strict proof thereof. He said there is no sufficient reasons shown by the applicants for delay. On the hearing date, Said Seif learned Advocate represented applicant while the respondent were represented by Lugano Mwasubila State Attorney. Applicant counsel apart from adopting applicants affidavit, he submitted that, there is point of law to be argued on appeal. After applicant found guilty there were sentenced to pay fine or imprisonment. They were ordered also to pay compensation and upon failure they will serve imprisonment. This is a legal point that applicant want to challenge on appeal referring case of **Athumani Ndandu and Mengi Ntandu, Civil application no. 551 01/2019.**

Respondent counsel, submitted that, there is no sufficient cause shown. There is no counting of each day of delay from 7<sup>th</sup> October when judgment was pronounced to 9<sup>th</sup> August 2021 when this application was filed referring this court to the decision of **Yusuph Masalu @ Jiduvi and 3 others criminal application no 112/03 of 2019, Bi – Sharke Naryani Vs. cliff Jiwan Godhu Naraan Misc. land application no 7 of 2021** (unreported). To the respondent counsel, applicant application is an after thoughts. He, thus, requested for dismissal of the application.

It is now settled law of the land that in application for extension of time the applicant must show that there is sufficient reason/ good cause for the delay. This was held in the case of *The International Airline of the*



**United Arab Emirates v. Nasser Nasser, Civil Application No. 569/01 of 2019 CAT** (unreported). Where at page 4 the Court had this to say:

*"It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be within the prescribed time."*

The word sufficient reason has not been defined in the statute or case law, but, the court in different cases has provided grounds/factors to be taken into account to ascertain whether there is good cause for extending time. In the cases of the **International Airline of the United Arab Emirates v. Nasser Nasser, Civil Application No. 569/01 of 2019 CAT** (unreported) and **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2020**.

The court pointed out the following factors,

- i. Whether the application has brought promptly.
- ii. Whether there was diligence on part of the applicant.
- iii. Whether the applicant has accounted for each and every day delayed.
- iv. Whether the delay is inordinate.
- v. Whether there is existence of a point of law e.g legality of the decision being challenged.
- vi. Whether the application has been brought promptly.

Conduct by the applicants from decision pronounced on 07/10/2020 to the date of filing of this application on 9<sup>th</sup> August, 2021 does not fit in the conditions set out by the case of **Lyamuya Construction** (supra). It is obvious that the applicants have never been diligent in prosecuting this case. The applicant has shown negligence, inaction and sloppiness



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which does not constitute good cause for the delay. The court in the case of **Dr. Ally Shabhay v. Tanga Bohora Jamaat [1997] TLR 305**, held that;

*"Those who wishes to come to court of law must 'not show unnecessary delay in doing so especially where a prescribed limitation period is provided by the law they must show due diligence."*

The Court in the case of **Paul Martin v. Bertha Anderson, Civil Application No. 7 of 2005(unreported)** held as follows;

*"Negligence, as no doubt Messers Mkongwa and Stolla, Learned Counsel for both parties are aware, does not constitute sufficient reason to warrant the courts exercise of its discretion to grant extension of time."*

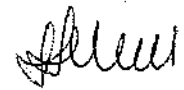
**Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2010**, Court held as follows;

*"The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take."*

The applicants has not shown as to what they were doing all that time. Same held in the case of **Ludger Bernard Nyoni v. NHC, Civil Application No. 372/01/2018, Court of Appeal( unreported)** at Dar es salaam page 7 para 2 that;

*"It is settled that in an application for enlargement of time, the applicant has to account for everyday of the delay involved and that failure to do so would result in the dismissal of the application."*

Principal of counting days of delay was also discussed in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Reference No. 8 of 2016** wherein the Court cited with approval the case of **Bushiri**



**Hassan v. Latifa Mashayo, Civil Application No. 3 of 2007** the Court at page 9 held that;

*"Delay even of a single day has to be accounted for, otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."*

The court has held times without number that ignorance of law is not sufficient reasons for extension of time. In the case of **Hadija Adamu v. Godbless Tumba, Civil Application No. 14 of 2013**(unreported) the Court stated as follow;

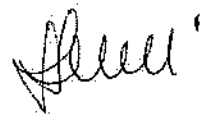
*"As regard the applicant's ignorance of law and its attendant rules of procedure, I wish to briefly observe that such ignorance has never been accepted as a sufficient reason."*

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;d

*"As has been held times out of number, ignorance of law has never featured as good cause for extension of time."*

Moreover, the court of appeal in the case of **Hamimu Hamisi Totoro@ Zungu Pablo and 2 others v. The Republic, Criminal Application No. 121/07 of 2018 CAT** at Mtwara(unreported) while citing with approval the case of **Charles Salungi v. The Republic, Criminal Application No. 3 of 2011** at page 5 had this to say;

*"To say least, a diligent and prudent party who is not properly seized of the application procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."*

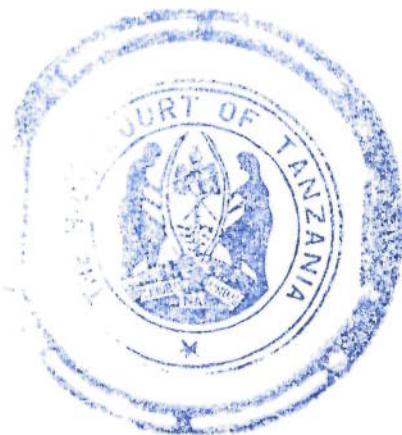


The Court of Appeal was again faced with similar situation in the case of **A.H. Muhimbira and 2 others v. John K. Mwanguku, Civil Application, No. MBY 13 of 2005** wherein the applicant had filed incompetent application in court which was struck out. In applying for extension of time the applicant advanced it as a reason for extension of time, the Court refused to entertain such ground and at page 8 of the ruling the Court had this to say;

*"On the other hand, even if it is accepted that the applicants themselves did not know the correct legal position to follow, it is trite principle that ignorance of legal procedure would also not constitute sufficient reason for extending time."*

Applicants has completely failed to advance sufficient reason to warrant extension of time. The applicant exhibited high degree of negligence and inaction which does not constitute good cause for extension of time. Also the applicants has failed to account for delay from when decision was delivered to when this application was filed. As correctly submitted by learned State Attorney. The applicants have not disclosed any sufficient reasons which this court may grant extension of time. This application lacks reasons for delay, same is dismissed.

**Ordered accordingly.**



  
**Z.G. Muruke**

**Judge**

**03/12/2021**

Ruling delivered in the presence of applicants in persons and Lugano  
Mwasubila State Attorney for the Respondent.



  
**Z.G. Muruke**

**Judge**

**03/12/2021**