

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CIVIL APPLICATION NO. 37 OF 2021

(Originating from Misc. Civil Application No. 11 of 2020 in the District
Court of Kyela)

Between

ATUFIGWEGE MWAKAKENDAAPPLICANT

VERSUS

LUPAKISYO MWAKASUMIRESPONDENT

RULING

A.A. MBAGWA J.

This is an application for extension of time within which to file a petition of appeal against the decision of the District Court of Kyela in Misc. Civil Application No. 11 of 2020.

The matter originally started in the Primary Court of Iloilo in Civil Case No. 22 of 2019 whereby the court entered judgment against the applicant. The applicant was not satisfied with the judgment of the Primary Court hence he sought to challenge it in the District Court of Kyela. However, as bad luck would have it, the applicant found himself out of prescribed time thus, he filed Misc. Civil Application No. 11 of 2020 in the District Court of Kyela to seek extension of time within which to file a petition of appeal. Upon hearing the parties, the learned magistrate dismissed the application for want of sufficient cause. The applicant was aggrieved with the dismissal order of the District Court but



still he failed to file an appeal within time. Consequently, he filed the present application.

The application is made by way of chamber summons under section 14(1) of the Law of Limitation Act [Cap 89 R: E 2019] and any other provision of the law and it is supported by the applicant's affidavit. In contrast, the application is opposed by the respondent through counter affidavit.

When the matter came for hearing, both parties appeared and argued the application in person. The applicant adopted the contents of his affidavit and argued that the delay was caused by sickness. Finally, he prayed the court to consider the contents of his affidavit and grant him extension of time to appeal against the decision of the District Court.

In rebuttal, the respondent submitted that the applicant had not advanced sufficient reasons to warrant him extension of time. He disputed the reasons for delay advanced by the applicant stating that the sick sheet attached to the affidavit was unreliable. The respondent contended that the applicant claimed that he was suffering from Tuberculosis whereas the sick sheet attached indicates that he had problems of abdomen pains, diarrhoea and vomiting. He eventually prayed the Court to dismiss the application.

Having gone through the application documents along with submissions by both parties it is common cause that issue for determination in this application is whether the applicant has shown good cause to warrant him extension of time.

Nonetheless, before embarking into merits of the application, it is worthwhile to note that the instant matter originates from the primary court as such, it ought to be brought under the provisions of Civil



Procedure (Appeals in Proceedings Originating in Primary Courts) Rules G.N. 312 of 1964 in particular Rule 3.

Unfortunately, the present application has been made under section 14(1) of the Law of Limitation Act [Cap 89 R: E 2019) which, in essence, is not the applicable law. However, in cognisance of the overriding objective principle, I have considered the phrase “any other provision of the law” cited by the applicant in the chamber summons to include Rule 3 of G.N. 312 of 1964 which is the correct enabling provision and therefore found the application competent before this Court.

With regard to the merits of the application, it is a settled law that the applicant must advance good cause for this Court to grant him extension of time. However, there is no decisive definition of what a good cause is. As such, courts do take in to account various factors to determine a good cause including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutihwa vs Kalokola Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited V. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni Versus National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported).

In this case, the applicant advanced sickness as a ground for delay. He attached the sick sheet from Njisi Dispensary to support his contention. In contrast, the respondent stated that the said sick sheet is unreliable. The sick sheet indicates that the applicant had problems of abdomen



pains, diarrhoea and vomiting whereas the applicant stated in his affidavit that he was suffering from Tuberculosis. Further, the said sick sheet is dated 08/08/2020 and it is not stated anywhere that the applicant was at one time admitted. On this basis, I found the applicant's version on sickness unfounded.

Further, it is on record that the decision by the District Court was delivered on 9/4/2020 and this application was filed on 7th September, 2020 which was almost five months later. There is no explanation as to why the applicant failed to lodge his appeal from 9/4/2020 when the ruling sought to be challenged was delivered to 08/08/2020 when he purportedly fell sick.

More so, the applicant has not accounted what befell him from 8/8/2020 when he was allegedly discharged from hospital to 7th September, 2020 when this application was filed.

Also, the applicant pleaded, under paragraph 8, that he was belated because he was looking for court fees and legal advice. However, the law is against the applicant. It is a trite law that financial constraint is not a sufficient ground for extension of time. See the case of **Wambele Mtumwa Shahame Vs Mohamed Hamis**, Civil Reference No. 8 OF 2016, CAT at Dra Es Salaam and **Yusufu Same & Another Vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002.

With respect to seeking legal advice, the applicant did not tell the court as to when and from whom was the legal advice sought. As such, this averment lacks substance.

Thus, having considered the attending circumstances in this case in line with the legal position as indicated above, it is my considered findings that the applicant has not established good cause for this Court to grant




him extension of time. In the event, this application is found devoid of merits and consequently it is hereby dismissed. Each part should bear its own costs.


It is so ordered

Right of appeal fully explained.




A.A. Mbagwa
Judge
10/12/2021

This ruling has been delivered in the presence of the applicant and respondent this day of 10th December, 2021.


A.A Mbagwa
Judge
10/12/2021

