

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY  
AT MOSHI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 42 OF 2021**

(C/F Misc. Criminal Application No.3 of 2021 in the District Court of Moshi  
at Moshi Original Criminal Case No. 745/2020 Moshi Urban Primary Court)

**ARBOGASTI KIMARO..... APPLICANT**

**Versus**

**ROSE KAMILI.....RESPONDENT**

**28/4/2022 & 30/5/2022**

**RULING**

**MWENEMPAZI, J.**

The applicant Arbogasti Kimaro is seeking for an extension of time to file an appeal against a ruling of the District Court of Moshi in Misc. Criminal Application No.3/2021 dated 19<sup>th</sup> August 2021. The ruling was with respect to an application for extension of time to file an appeal against the decision of the Primary Court in Criminal Case No. 745/2020 in which the Applicant was convicted. The District Court dismissed the application for the reason that the Applicant had failed to demonstrate good cause to be granted extension of time. Unsatisfied with the decision of the District Court the Applicant wished to appeal against it but once again he found himself being out of time to do so and that led to the present application before this court seeking extension of time to file an appeal.

The application has been made under section 14(1) of the Law of Limitation Act, [Cap 89 RE 2019] and supported by an affidavit sworn by the applicant. In his affidavit at paragraph 6, the applicant has advanced only one reason for the delay that is sickness. He stated that after the copies of the decision were issued on 3<sup>rd</sup> September 2021, he fell sick and was instructed by his doctor not to do anything that would cause stress or pressure on him. The respondent on the other hand filed a counter-affidavit contesting grant of the application.

On 7<sup>th</sup> March, 2022 when the matter came up for hearing, the applicant requested that the application be disposed of by way of written submissions, the application which was not objected to by the respondent. The Court ordered parties to file their submissions as scheduled.

I have gone through the affidavits and the submissions for and against the application. In summary what the applicant said in his submission in chief is exactly what he stated in his affidavit in support of the application. That he could not file the appeal on time because he fell sick and was instructed by his doctor not to do anything that would cause stress or pressure on him. He thus found himself out of time and could not exercise his right of appeal. For that reason, he prayed for the application to be granted.

In her brief reply submission, the Respondent stated that the Applicant failed to adduce good and sufficient reason why he failed to appeal within time as required by the law. Citing the case of **Ramadhani J Kihwani vs. TAZARA**, Civil Application No. 401/18 of 2018 (unreported) the Respondent submitted that the Applicant ought to account for each day of



delay as was stated in the cited case. It was the Respondent's prayer that the application be dismissed.

In his rejoinder the Applicant responded to the respondents' submission that he ought to have accounted for each day of the delay and he stated that when determining application to appeal out of time the court has also to consider whether or not there is sufficient reasons not for the delay but also sufficient reason for extending time during which to entertain the appeal. He cited the case of **Republic vs. Vona Kaponda and 9 Others (1985) TLR 84**. The Applicant thus stated that he had sufficient reason to launch his appeal that is being aggrieved by the decision of the District Court of Moshi. The Applicant went on stating the reasons as to why he failed to file his appeal at the District Court, reasons which I think are irrelevant at this stage. In the end the Applicant prayed for his application to be granted for justice to be seen done.

I have considered submissions from both parties including the affidavit for and against the application. When it comes to determination of this kind of application the law is very clear on what should be considered. The Applicant has made his application under Section 14(1) of the Law of Limitation Act, [CAP 89 R.E. 2019]. This law provides:

*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 the 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 added).*

This is a general provision that gives the court powers to grant extension of time after the lapse of the limitation period for filing appeals. This being a criminal case the Criminal Procedure Act also has provided under section 361 (2) that;

*"The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed." (Emphasis is mine).*

Based on the above cited provisions, the Court has been vested with discretionary powers to grant or not to grant the application for extension of time subject to good cause. The court's discretionary powers were well explained in the case of **Godwin Ndewesi and Karoli Ishengoma v Tanzania Audit Corporation [1995] T.L.R. 200**. In this case the Court of Appeal held that:

*"The rules of court must prima facie be obeyed and in order to justify extending time during which some step in the procedure requires to be taken there must be some material on which the court can exercise its discretion".*

The Court emphasized the fact that there must be sufficient cause or good cause upon which it can base its decision. The issue for determination in



this application is therefore whether the applicant has availed this Court with sufficient or good cause warranting grant of this application.

The Applicant's reason upon which this application is grounded on is one that after the decision was delivered and copies issued on 3/9/2021 the Applicant fell sick and was instructed by his doctor not to do anything that would cause stress or pressure on him. This is the only reason advanced by the applicant as to why he found himself out of time to file his intended appeal. Clearly the Applicant has not been able to show sufficient reason as required by the law. The decision of the District Court was delivered on 19/8/2021 from this date until the day when this application was made on 24/12/2021 about four months had passed. The law has under **section 361(1) (b) of the Criminal Procedure Act, [Cap 20 R.E.2019]** given 45 days from the date of the finding, sentence or order appealed against for an aggrieved party to file an appeal and in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against has been excluded. In this case copies of the decision were issued on 3/9/2021 therefore even if we deduct the days before the copy of the decision was issued the Applicant would still be out of time by more than 90 days. Examining the only reason advanced by the Applicant for delay, I find it lacking because it is not supported by any evidence. The law of evidence has placed the burden of proof on the one who alleges existence of any facts. This is provided for under **section 110(1) of the Evidence Act, (Cap 6 R.E. 2019)** which states;

*"Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."*

Based on the above provision of law, the Applicant's reason for delay was just an allegation of facts which were not proved. The Applicant did not provide any evidence to prove the alleged fact that he was sick and that there were doctor's instructions as he said. He ought to show for how long was he not allowed to do anything that would stress him. The applicant was also obligated to account for each day of delay before seeking refuge under the justification that he fell sick. In the case of **Lyamuya Construction Company Ltd vs. Board of Trustees of the Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT (unreported)**, the Court enumerated the basic conditions to be met prior to the Court can be asked to exercise its discretionary powers. Those conditions were:

- a) That the applicant must account for all the period of delay,
- b) The delay should not be inordinate,
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and
- d) Illegality of the decision.

The applicant has not been able to account for each delayed day from 03<sup>rd</sup> September up to 24<sup>th</sup> December, 2021. The applicant has therefore failed



the first test. After the dismissal order on 19<sup>th</sup> August, 2021, the applicant waited until the 24<sup>th</sup> of December, 2021 to file this application. There are more than 90 days from the date the copies of decision were issued and no explanation was given as to why he had to wait until 24<sup>th</sup> December, 2021 for this application to be filed. The delay from 3<sup>rd</sup> September, 2021 to 24<sup>th</sup> December, 2021 is in my view inordinate given the circumstances.

To this Court, the above did not exhibit diligence. Instead, the applicant demonstrated apathy and inaction in the prosecution of his intended appeal. For the foregoing reasons I, without any doubt find this application devoid of merits and consequently dismiss it with costs. It is so ordered.

Dated and delivered at Moshi this 30<sup>th</sup> day of MAY, 2022



A handwritten signature in blue ink, appearing to read "T. M. Mwenempazi".

**T. M. MWENEMPAZI**  
**JUDGE**

Ruling delivered in court this 30<sup>th</sup> day of May, 2022 in the presence of the applicant and the respondent.

A handwritten signature in blue ink, appearing to read "T. M. Mwenempazi".

**T. M. MWENEMPAZI**  
**JUDGE**