

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA DISTRICT REGISTRY**

AT IRINGA

MISC. CIVIL APPLICATION NO. 02 OF 2022

BINAS MWANI APPLICANT

VERSUS

ALLEX MWEMI RESPONDENT

(Originating from Civil Case No. 01 of 2017 (Mgololo Primary Court) and Civil Appeal
No.2 of 2020 (Mufindi District Court) at Mafinga).

RULING

Date of Last Order: 05/07/2022 &
Date of Ruling: 08/07/2022

S.M. KALUNDE, J.:

The application at hand is preferred by way of chamber summons wherein the applicant is seeking to extend time within which to lodge an appeal out of time against the decision of the Mafinga District Court sitting at Mafinga (henceforth "the appellate court") in **Civil Appeal No. 02 of 2020**. The application is supported by affidavit that was sworn by, BINAS MWANI, the applicant. The application was resisted by a counter affidavit duly sworn by MR. JASSEY SAMUEL MWAMGIGA, learned counsel for the respondent.

Briefly stated, the facts leading to the present application are that; in 2010 the respondent borrowed a chain saw machine from the applicant on a condition that the respondent shall pay Tshs. 15,000.00 per day. The arrangement was to last for two weeks. At

the end of the two weeks the chain saw had not been returned to the applicant. On his part, the applicant considered that the chain saw had been in continuous use for all the period it had not been returned. Thus, seven year later on 17th February, 2017, the applicant filed **Civil Case No. 01 of 2017** (henceforth "the suit") before the Mgotho Primary Court (henceforth "the trial court"). In the suit the applicant sought to recover the sum of Tshs. 11,400,000.00 being a remainder of the unpaid costs for renting the chain saw to the respondent. At the conclusion of the trial the trial court made a finding that the applicant had failed to prove his case. Consequently, the suit was dismissed.

The applicant unsuccessfully lodged Civil Appeal No. 02 of 2020 before the appellate court. The decision of the appellate court was delivered on the 30th day of March, 2021. Being out of time, still interested in pursuing the appeal to this Court, the applicant filed the present application seeking the indulgence of this court in extending time within which file an appeal out of time.

By consent of the parties, the application was argued by way of written submissions. All submissions were duly filed in accordance with orders of the Court. Unrepresented, the applicant filed his own submission in chief. However, it would appear that something went amiss, and thus he decided to engage **Mr. Leonard Sweke** learned counsel in filing his rejoinder submissions. On his part the respondent had the services of **Mr. Mwamgiga Jassey Samuel**, learned counsel in drawing and filing his submissions.

The main issue begging my determination here is whether the applicant herein has, through his chamber summons, affidavit and submissions, been able to demonstrate any **"good or sufficient cause"**.

It is settled that courts have discretion to grant or refuse an application for extension of time. However, the discretion has to be exercised judiciously according to the rules of reasoning and justice, and not according to private opinion. Relying on the above doctrines, courts have insisted that for the application of the present nature to succeed the applicant must demonstrate "good or sufficient cause". As to what constitutes "good or sufficient cause", courts have developed principles for consideration. These considerations include: **one**, whether the applicant has accounted for all the period of delay; **two**, the delay must not be inordinate; **three**, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and **four**, whether there are some other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

The above principles were laid down in **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) and affirmed in several subsequent decision of the Court of Appeal. Guided by the above principles I will now delve into determination of the present application.

It is not in dispute that the decision sought to be challenged was delivered on the 30th day of March, 2021. The clock for filing an appeal, therefore, started to wind down on 31st day of March, 2021 to the date when the present application was filed before this Court, that is 10th day of January, 2022. By simple calculations that is a delay of almost 286 days. Simply put, that is nine (9) months and eleven (11) days.

The next question is whether the applicant has been able to explain away the delay of 286 days. The answer to that is a straightforward no, and I will illustrate hereunder.

In accordance with the affidavit filed in support of the application, particularly paragraphs 3 and 4, the applicant attributed delay in filing the appeal to sickness. He also contended that the appeal has overwhelming chances of success. The respective paragraphs read: -

"3. *That I was not satisfied with the decision of the trial court. **While processing the appeal I felt suddenly sick and I attended treatment from February, 2021 to June 2021 in which I failed to file the appeal.** the sick sheet reports are here attached to form part of this application as Annexure P.*

4. *That **I have overwhelming chance of success in the intended appeal.***"

[Emphasis is mine]

Indeed, the position of the law in our jurisdiction is settled that sickness may constitute a sufficient cause for extension of time.

There is a chain of authorities supporting this view including the case of **Director Ruhonge Enterprises vs. January Lichinga**, Civil Application No. 01 of 2006; and **John David Kashekya vs. The Attorney General**, Civil Application No. 01 of 2012 (all unreported). It is correspondingly settled that for sickness to amount to "good or sufficient cause" for extension of time, the applicant must demonstrate that she/he took necessary steps upon recovery from the alleged sickness and that he was not unnecessarily negligent or sloppy. See **Ludger Bernad Nyoni vs National Housing Corporation** (Civil Appl No.372/01 of 2018) [2019] TZCA 154; (06 May 2019 TANZLII).

In the present case the applicant contended that whilst processing his appeal, he suddenly felt sick, and attended treatment from February 2021 to June 2021 and therefore he could not file the appeal. His affidavit appended medical chits from "**Consolata Hospital Ikonda**" as proof of his admission into hospital. The medical chits show that he attended at the hospital for medical checkup on several dates. I have also carefully examined the medical chits and, I must say, given his age I have no reason to disbelieve him. As was held by the Court of Appeal in **John David Kashekya vs. The Attorney General**, Civil Application No. 1 of 2012 (Unreported), sickness is not a shared experience but rather an individual experience by the person who is sick. Mindful of that, if the applicant, a 66 years old man, by a sworn statement says he was sick between February 2021 to June 2021 and he has produced medical chits to that effect; and given that there no evidence from the

respondent to show that he was okay or his medical condition improved during that period sufficient for him to prosecute his appeal, I find the reason of sickness given by the applicant to be sufficient in excluding the period between February 2021 to June 2021; as I hereby do.

That notwithstanding, I do not think the applicant has been able to explain away the entire delay period. As rightly pointed out by the Mr. Mwamgiga, the applicant has failed to explain why he could not file the appeal in the period from July 2021 to December 2021. That is a lapse of more than six (6) months. The position of law is settled that failure by an applicant for extension of time to explain away every day of delay will not trigger the Court to grant the enlargement of time sought. There is a plethora of authorities of the Court which hold this view - see: **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, and **Tanzania Coffee Board vs. Rombo Millers Ltd.**, Civil Application No. 13 of 2015, **Sebastian Ndaula vs. Grace Rwamafa (legal personal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014, **Yazid Kassim Mbakileki vs. CRDB (1996) Ltd Bukoba Branch & Another**, Civil Application No. 412/04 of 2018 and **Tanzania Bureau of Standards vs. Anitha Kaveva Maro**, Civil Application No. 60/18 of 2017 (all unreported)."

That said, considering the circumstances of this case, I am satisfied that the applicant has failed to provide a full detailed and accurate account of the causes of the delay, from July 2021 to January 2022, and its effects sufficient for this Court to clearly

understand the reasons for the delay and to assess the responsibility of the applicant before exercising its discretion. That said, I find no substance in this argument.

On whether the application should be granted since the proposed appeal has chances of success, I think I need not labour much. The law is settled that in applications of this nature the applicant has a duty to show good or sufficient reason why he should be given more time. At this stage there is really no need to show that his appeal has a reasonable prospect of success or even that he has an arguable case. in the case of **Wambele Mtumwa Shahame vs Mohamed Hamis** (Civil Reference No.8 Of 2016) [2018] TZCA 39; (06 August 2018), the Court of Appeal (**Mkuye, J.A**) stated:

*"On this we are guided by the decision in the case of **Shanti vs. Handocha** (1973) EA 2007 where the East African Court of Appeal made a distinction between an application for extension of time and that for leave to appeal. The said Court stated: -*

"The position of an application for extension of time is entirely different from an application for leave to appeal. He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason he can show is that the delay has not been caused or contributed to by dilatory conduct on his part. But there may be other reasons and these are all matters of degree. He does not necessarily have to show that his appeal has a reasonable prospects of success or even that he has an arguable case."

The Court went on to observe that:

"The notable criteria in applications for extension of time is to show a good cause and not overwhelming chances of success. In any case, that would amount to considering the appeal's merits."

Considering the applicant's reasons for the delay advanced in the present case and the failure to account for each day of the delay; on my part, I find no "good or sufficient cause" has been advanced calling the exercise of my discretion in extending time to file an appeal. Consequently, the application, which is destitute in merits, is hereby dismissed with costs.

Order accordingly.

DATED at IRINGA this 08th day of JULY, 2022.




S.M. KALUNDE

JUDGE