

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

**MISC. CIVIL APPLICATION NO. 19 OF 2020
(Originating from Misc. Civil Application No. 13 of 2021 and
Matrimonial Appeal No. 4 of 2017, both of the High Court of
Tanzania, at Iringa).**

**KABAKA NDENDA.....APPLICANT
VERSUS
MWANAHAWA RAMADHANI.....RESPONDENT**

RULING

22 February & 19 May, 2022.

Utamwa, J.

This is an application for extension of time within which the applicant, KABAKA NDENDA can file a notice of appeal to the Court of Appeal of Tanzania (the CAT) against a judgement (impugned judgment) of this court (Shangali, J. as she then was), in Matrimonial Appeal No. 4 of 2017. The application was made under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 RE. 2002 (Now RE 2019), henceforth the AJA. It was supported by an affidavit of the applicant himself. The respondent, Mwanahawa Ramadhan resisted the application through her counter affidavit.

When the application was called upon for hearing both parties appeared in person and unrepresented. They both addressed the court to

the effect that they had nothing to add to their respective affidavits, hence this ruling.

In his affidavit, the applicant essentially deponed that, he had actually appealed against the impugned judgment to the CAT. The appeal was registered as Civil Appeal No. 268 of 2018. However, it was struck out by the CAT for some technical defects. He also attempted to seek for extension of time (before this court) so that he could file the notice of appeal out of time. This was through an application which was inadvertently titled "Matrimonial Appeal No. 13 of 2021. Nevertheless, this matter was withdrawn for the erroneous title with leave to refile it.

It was also stated in the affidavit of the applicant that, the delay was due to the erroneous prosecution of the Appeal No. 268 of 2018 before the CAT. The affidavit also stated that, the impugned judgment was based on illegalities and it was wrongly founded.

In her counter affidavit, the respondent basically refuted all the facts contained into the applicant's application save for the fact that, the said Matrimonial Appeal No. 13 of 2021 was withdrawn for the erroneous title.

I have considered the record and the law. In my settled opinion, since the application at hand is for extension of time, it has to be governed by the branch of law on that subject. One of the important principles of this branch of law is that, extension of time is granted at the judicious discretion of the court upon the applicant adducing good cause or sufficient reasons; see the decision by the CAT in the case of **Mumello v. Bank of Tanzania [2006] 1 EA 227.**

reason for granting extension of time to file a competent matter out of time for seeking the same orders or remedies that had been sought in the previous matter which was struck out, provided that, the affected party/applicant promptly moves the court for the extension of time upon the order for the termination or striking out the previous matter being made.

In the matter at hand therefore, it is my view that, the doctrine of technical delay is in favour of the applicant. This is because, the record and his affidavit demonstrate that, he had been prosecuting the erroneously appeal before the CAT that was ultimately struck out for technical reasons. He also instituted the wrongly titled application that was terminated by being withdrawn for technical reasons of the inaccurate title. Again, I consider the applicant as being prompt in taking action. This is because, he punctually took steps upon his appeal being struck out by the CAT. The appeal was struck out on the 21st April, 2021 as per the copy of the CAT order attached to the affidavit. He lodged the erroneously titled application on 27th May, 2021 as per the chamber summons that had instituted it. That chamber summons is part of the record for the matter at hand. The said application was withdrawn on the 6th July, 2021 as per the copy of withdrawal order also attached to the affidavit. The applicant instituted the application at hand on the 2nd of August, 2021 according to the rubber stamp of this court on top of the chamber summons and the endorsement at its bottom.

The applicant thus, by simple arithmetic, filed the wrongly titled application before this court after the expiry of only 36 days from when the appeal was struck out by the CAT. He also instituted the application at

hand after the lapse of only 27 days from the date when his application was withdrawn with the leave to refile it. The Law of Limitation Act, Cap. 89 RE 2019 (the LLA) does not provide for time limitation regarding filing an application for extension of upon a previous application/matter being struck out or terminated for technical reason in relation to the doctrine of technical delay. The law provides that, where it (the law) does not set a time limitation for taking any legal action, then the time limitation for such application is sixty days; see Item 21 of Part III in the Schedule to the LLA and the decision by the CAT in the case of **Bank of Tanzania v. Said A. Marinda and 30 others, Civil Reference No. 3 of 2014, CAT**. Indeed, there is another decision by the CAT which is apparently in friction with the **Bank of Tanzania case** (supra). This is **Tanzania Rent A Car Limited v. Peter Kimuhu, Civil Application No. 226/01 of 2017, CAT at Dar es Salaam** (unreported). This precedent basically held that, the above mentioned sixty days rule applies to all applications the time limitation of which is not set by any law, except applications for extension of time.


It follows thus, that, since none of the above discussed two periods of delay by the applicant exceeded sixty days and since the present application by him is for extension of time, then he remains protected by both precedents [i.e., the **Bank of Tanzania case** (cited above) and the **Tanzania Rent** (supra)] though they seem to be to be in friction.

The applicant was thus, within time when he filed the erroneously titled application upon his appeal being struck out and when he filed the present application upon his said application being withdrawn with leave to refile. Promptness in taking legal steps has also been considered to be among the good cause for extending time. The respondent's counter

affidavit that refuted the facts supporting the applicant's facts on the technical delay cannot thus, be considered against him. This is because, it was not supported by the record. The record supports the applicant as demonstrated above.

Regarding the second reason adduced by the applicant, I do not think if it will be of any help to him. This is because, he did not give any elaboration on which law had been violated by the impugned judgement. I therefore, disregard that reason.

Now, owing to the strength of the first reason for the application (related to the doctrine of technical delay), I find that, the applicant has adduced sufficient reasons for granting the prayed extension of time. I accordingly answer the issue posed above affirmatively and I consequently grant this application. He shall thus, file the intended notice of appeal to the CAT with 30 (thirty) days from the date of delivering this ruling. Each party shall bear its own costs since the respondent who has lost this application did not necessitate the institution of the application at hand. It is so ordered.


J. H. K. Utamwa
Judge
15/05/2022

19/05/2022.

CORAM; Hon. Z. Mpangule, Ag. DR.

Appellant: present.

Respondent: present.

BC: Ms. Gloria. M.

Court: Ruling delivered today in the presence of both parties.


Z. MPANGULE
AG. DEPUTY REGISTRAR
19/05/2022.