

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 196 OF 2021

CONSOLATA MWAKISU APPLICANT

VERSUS

THE DIRECTOR GENERAL OF NSSF RESPONDENT
***(Arising from the decision of this Court (Bongole, J.) dated 12th day
of December, 2014 in Civil Appeal No. 118 of 2011)***

RULING

5th and 29th July, 2022

KISANYA, J.:

Before me is an application for extension of time within which to file a notice of appeal to the Court of Appeal and a letter requesting for certified copies of proceedings, exhibits, judgment and decree in Civil Appeal No. 118 of 2011. The application is by way of a chamber summons made under section 11(1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] and section 14(1) of the Law of Limitation Act [Cap. 89, R.E. 2019]. Supporting the application is an affidavit of Consolata Mwakisu, the applicant herein. On the other side, the respondent, National Social Security Fund, filed a counter affidavit taken out by Grace Lupondo, learned State Attorney from the Office of the Solicitor General.

The background facts of this matter are clearly in the supporting affidavit. Briefly revisited the facts are that, on 12th December, 2014, this Court (Bongole, J., as he then was) dismissed the appellant's appeal in Civil Appeal No. 118 of 2011.

Discontented, the appellant filed a notice to the Court of Appeal on 12th December, 2014. She then instituted her appeal on 18th November, 2019. Although the Deputy Registrar had issued a certificate of delay, the appellant's appeal was struck out on 1st April, 2021 for being time barred on the following reasons that, the certificate of delay was erroneously issued in relation Misc. Civil Application No. 115 of 2015; and that, the letter to the Deputy Registrar requesting for requisite copies of documents for the purposes of the appeal from which the certificate of delay was made, was not lodged within 30 days from the date of the decision. That decision triggered the appellant to file the present application.

At the hearing, the applicant was represented by Messrs. Ndurumah Majembe and Sangila Martin, learned advocates, whereas the respondent had the services of Ms. Grace Lupondo and Mr. Salehe Manoro, learned State Attorneys.

Upon taking the floor, Mr. Majembe prayed to adopt the chamber summons and supporting affidavit to form part of his submission in chief.

He further submitted that this court has discretion to grant the extension of time. The learned counsel contended that the applicant had advanced technical delay. He urged this Court to be guided by the principles set out in the case of **Salvand K.A. Rwegasira vs China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006 (unreported) in which it was held that extension of time should be granted where there is a technical delay. In the premises, the learned counsel prayed that the prayers set out in the chamber summons be granted. He did not press for an order as to costs.

In refutation, Ms. Lupondo commenced her submission by adopting the counter affidavit to form part of her submission. She agreed with the applicant's counsel that extension of time is granted at the discretion of the court. However, she submitted that such discretion is exercised if the applicant has advanced sufficient cause. Citing the case of **Lyamuya Construction Ltd vs Registered Trustees of Young Women Christian Association of Tanzania**, Civil Appeal No. 2 of 2010 (unreported), the learned State Attorney contended that the applicant has not advanced a sufficient cause for extension of time. Her submission was based on the following reasons:

One, referring to paragraph 2 of the supporting affidavit in which the applicant stated that when she failed to differentiate her two cases at the time of requesting the copies of the proceedings and judgment, Ms. Lupondo was of the view that the said fact exhibits negligence, lack of diligence or ignorance of law on part of the applicant.

Two, it was the learned state Attorney's argument that the applicant has failed to account for each of delay. Elaborating her argument, she submitted that the applicant was required to file the present application immediately after the decision of the Court of Appeal dated 1st April, 2021. According to her, there was no requirement of applying for the copy of the said ruling which was supplied to the applicant on 12th April, 2021. She further argued that, the applicant has not accounted for five days from 12th April, 2021 when she received the copy of ruling of the Court of Appeal to 16th April, 2021 when the present application was lodged in this Court. Making reference to the case of **Finca (T) Limited and Another vs Boniface Mwalukasa**, Civil Application No. 589/12 of 2018 (unreported), the learned State Attorney urged this Court to hold that the applicant has not accounted for each day of delay.

Three, the learned counsel argued that the ground of illegality imputed in paragraph 10 of the supporting affidavit does not qualify to form

the basis of extension of time. Ms. Lupondo contended that the said ground of illegality was not based on the impugned decision and that it was not apparent on face of record. It was her further contention that the purported ground of illegality requires a long argument. In view of the decision of the Court of Appeal in **Hamis Mohamed (as the Administrator of the Estate of the late of Risasi Ngawe) vs Mtumwa Moshi(as the Administrator of the Estate of the late of Moshi Abdallah)**, Civil Application No. 407/17 of 2019, she was of the view that the ground of illegality cannot be considered by this Court.

On the foregoing submission, Ms. Lupondo submitted that this is not a fit case for granting the order for extension of time. She was of the view that the case of **Salvand K.A. Rwegasira vs China Henan International Group Co. Ltd** (supra) is distinguishable because the application thereto was filed immediately after striking out of the appeal. In conclusion, she prayed that the application be dismissed with costs.

Rejoining, Mr. Majembe submitted that the copy of the ruling of the Court of Appeal which struck out the appellant's appeal was relevant to the present application. He further submitted that the applicant used four days to prepare the documents and file this application. Referring the court to the case of **Lyamuya Construction Ltd** (supra) the learned counsel argued

that the court is also governed by the rule of reason and justice. He was of the view that the application was filed immediately after the decision of the Court of Appeal.

Mr. Majembe went on to rejoin that the applicant has not raised the ground of illegality or implying the same in paragraph 10 of the supporting affidavit. He contended that paragraph 10 shows a point of law to be considered by the Court of Appeal. The learned Counsel contended that the finding to such effect had been made by this Court (Mgonya, J) when granting the applicant's leave for extension of time to apply for leave to appeal.

It was further submitted by Mr. Majembe that the application was filed promptly, and that the applicant had not pleaded ignorance of law. He reiterated that the order as to costs should not be made on the account that the matter arose from an employment dispute.

Having considered the rival arguments from both parties, the issue before me, is whether the applicant has managed to demonstrate sufficient cause which extension of time can be granted.

It is worth nothing here that both counsel is at one that, the power of the Court to extend time is discretionary. I also agree with Ms. Lupondo

that the discretion is judicial. It is thus, exercised basing on the rules of reason and justice and whether the applicant has advanced sufficient reason or good cause. In determining whether there is sufficient reason or good cause, the court is guided by a number of factors set out by case law. These include, the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged. There is a list of authorities restating this position of law including; **Lyamuya Construction Company limited** (supra), **Salvand K.A. Rwegasira, Finca (T) Limited and Another** (supra) and **Hamis Mohamed (as the Administrator of the Estate of the late of Risasi Ngawe)** (supra) cited by the learned counsel for both parties.

In terms of the supporting affidavit and submission in support of the application, the applicant has advanced technical ground as a ground for extension of time. It is in evidence that the applicant lodged the notice of appeal within time prescribed by the law. She also prosecuted the appeal which was struck out by the Court of Appeal on 1st April, 2021. In other words, the main explanation for the delay is to the effect that time was lost when the applicant was pursuing an appeal in the Court of Appeal. I agree

with Mr. Majembe that; the said factor or explanation constitutes what is known as technical delay. The law is settled that an extension of time should be granted when there is technical delay. I am fortified by the case of **Salvand K.A. Rwegasira vs China Henan International Group Co. Ltd** (supra) where it was held that: -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

Being guided by the above authority, it is clear that the delay of up to 1st April, 2021 was caused by technical delay. Nothing to suggest that the applicant was not prosecuting the said appeal in good faith. It is therefore, an excusable delay. [See the case of **Omary Ally Nyammalege (as Administrator of the Estate of the late Seleman Ally Nyamalenge) and Others vs Mwanza Engineering Works** Civil Application No. 94/08 of 2017(unreported)]

However, both parties were at one the present application was lodged on 16th April, 2021. It was therefore, Ms. Lupondo's contention that the delay from 1st to 16th April, 2021 was not accounted for. According to paragraph 8 of the supporting affidavit, the period from 1st to 12th April, 2021 was used to obtain the copy of the ruling of the Court of Appeal in which her appeal was struck out. Indeed, the said ruling was appended to the supporting affidavit. Considering that the reasons for striking out the applicant's appeal were stated in the ruling of the Court, I agree with Mr. Majembe that its copy was necessary in processing this application. She was in a better position of apprehending the recourse to be taken after reading the ruling.

With regard to the period from 12th to 16th April, 2021, Mr. Majembe contended that the same was used to prepare the documents for this application. I have considered the record that, the application was filed on 17th April, 2021. Thus, the length of delay from the date of receiving the copy of ruling of the Court of Appeal is five (5) days and thus not inordinate. Also, basing on the circumstances of the case, time for preparation of documents to be filed may constitute reason for delay. See the case of **Patrick Magologozozi Mongella vs The Board of Trustees of the Public Service Pensions Fund**, Civil Application No. 1999/18 of 2018

(unreported), in which twelve (12) days were found to be reasonable in preparation and filing of the application for extension of time upon receipt of the necessary documents. Therefore, it is my considered view that the period of five days was reasonable for the applicant to prepare and file the application at hand.

With regard to the ground of illegality, I agree with the learned counsel for the applicant, that it was not raised by the applicant. Thus, I find it not necessary to consider the same.

In the event and for the reasons stated, I grant the application. It is ordered that the notice of appeal and letter requesting for certified copies of proceedings, exhibits, judgment and decree be filed within fourteen (14) days from the date hereof. As rightly argued by Mr. Majembe, this is a labour matter. Therefore, each party shall bear its own costs.

DATED at DAR ES SALAAM this 29th day of July, 2022.



S.E. Kisanya
JUDGE
29/07/2022

