

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. CIVIL APPLICATION NO. 69 OF 2021

(Originating from Civil Case No. 8 of 2018, Karagwe District Court)

SAMWEL ANGELO..... APPLICANT

VERSUS

FLORA LAUWO.....RESPONDENT

RULING

05/07/2022 & 22/07/2022
NGIGWANA, J.

In the instant application, the Applicant Samwel Angelo is seeking for extension of time to appeal out of time to this court against the decision/ruling of the District Court of Karagwe in Civil case No. 8 of 2018 handed down on 13/05/2019. The court is also asked to grant costs and any other order as the court may deem fit and just to grant.

The application is brought by way of chamber summons made under section 14 (1) of the Law of Limitation Act, Cap. 89 R:E 2019 and order XLIII rule 2 of the Civil Procedure Code Cap. 33 R:E 2019 and supported by an affidavit sworn by the Applicant himself. The applicant filed, a counter affidavit sworn by Mr. Aaron Kabunga, learned advocate, contesting the application.

Briefly, the facts leading to this application as can be deciphered from the affidavit and the record are that; before the District Court of Karagwe at

Kayanga the Applicant sued the respondent Flora Lauwo for the tort of defamation (Libel) praying for judgment and decree against the respondent as follows; payment of Tshs. **82,800,000/=** being special damages, payment of Tshs. **400,000,000/=** being general damages, payment of interest on the principal sum at the commercial rate from the date the cause of action arose, payment of decretal sum at the court rate from the date of judgment until payment in full, an order that the respondent publishes and broadcast information on TV that SAMIAT ABDALA was never abandoned, costs of the suit, and any other relief as the court would deem fit and just to grant.

Upon being served with the plaint the respondent filed a written statement of Defence (WSD) together with a notice of preliminary objections on point of law. The preliminary objection were to the effect that, the applicant had sued a wrong party, and that the court had no jurisdiction to entertain the matter.

Upon hearing the preliminary objections, the district Court of Karagwe was satisfied that the applicant has sued a right party, but it had no territorial jurisdiction to entertain the matter. Consequently, the plaint was dismissed for want of territorial jurisdiction.

The applicant was aggrieved by the order dismissing the plaint but did not appeal within the prescribed time, therefore, on 11/02/2020 he filed an application for extension of time to appeal out time to this court. The same was registered as Civil application No. 5 of 2020.

The application was heard, and finally, granted, whereas the applicant was given 14 days from 28/05/2021 to file the intended appeal.

The Applicant complied with the court order, his appeal was registered as Appeal No. 5 of 2021, but the same ended being struck out on 30/09/2021 for incompetence, hence this application.

The affidavit in support of the application cite one ground for the delay to wit; **technical delay**. When the matter came for hearing, the applicant appeared in person, unrepresented while Mr. Frank Karoli, learned advocate appeared for the respondent.

Submitting in support of the application, Mr. Angelo contended that he was not negligent at all since the reason for the delay is technical. He added that, it is trite that technical delay constitute sufficient ground for the grant of extension of time. He added that the struck out of this appeal, he made follow-ups to obtain the drawn order in the District Court in Civil Case no. 8 of 2018, and finally obtained it on 30/11/2021. He also submitted that he prepared the documents and on 07/12/2021, he filed the present application. He referred me to the case of the **Director General LAPF Pensions Fund versus Pascal Ngalo**, Civil application No. 78/08 of 2018 CAT (unreported) where technical delay was maintained as sufficient ground for extension of time. He ended his submission urging the court to grant the application.

When invited to make his submission Mr. Frank Karoli, learned advocate for the respondent, contrary to the counter affidavit, supported the application

and urged the court to grant the application on the ground that, the applicant has managed to demonstrate sufficient cause for the delay.

Having gone through the submissions by both parties, it goes without saying that the issue for determination is whether the applicant has demonstrated good cause for the delay for this court to grant him extension of time.

It is a well-established principle of law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. However, such discretion must always be exercised, judiciously, and that the overriding consideration is that, there must be sufficient cause for so doing. See the case of **Yusuf Same and Another versus Hadija Yusuf**, Civil Appeal No. 1 of 2002 CAT (unreported) and **Benedict Mumelo versus Bank of Tanzania** [2006] EA 277.

In the instant application, the reason for the delay according to the affidavit supporting the application and submissions **by the parties is technical delay.**

In the case of **Constantine Victor John versus Muhimbili National Hospital**, Civil Appeal No. 214/18 of 2020 it was held inter alia "*that technical delay is applicable only in situation when the first appeal or application is timely filed.*"

In the instant case, Appeal No. 5 of 2021 was duly filed within 21 days ordered by the court after granting extension of time to appeal out of time. It is unfortunate that the same was struck out on 30/09/2021 owing to the reason that the memorandum of appeal was not accompanied by a drawn

order. From there, the applicant requested for the copy of the drawn order from the District Court of Karagwe in Civil Case No. 8 of 2018, and it was ready for collection on 30/11/2021, and between 31/11/2021 and 6/12/2021, he prepared the necessary documents and filed this application on 7/12/2021.

Indeed, the applicant has managed to show good cause to justify extension of time as sought. In the event, the application is hereby granted. The applicant is given 14 days from date of this ruling to file the intended appeal. No order as to costs.

It is so ordered.

Dated at Bukoba this 22nd day of July, 2022.



E.L. NGIGWANA

JUDGE

22/07/2022

Ruling delivered this 22nd day of July, 2022 in the presence of the Applicant in person, Hon. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C, but in the absence of the respondent.



E.L. NGIGWANA

JUDGE

22/07/2022