

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SONGEA

AT SONGEA

MISCELLANEOUS CIVIL APPLICATION NO. 02 OF 2022

*(Arising from the Civil Appeal No. 14 of 2021 at the District Court of Songea,
originated from Civil Case No. 68 of 2021 at Mfaranyaki Primary Court)*

MIKAELA MUHORO APPLICANT

VERSUS

MOHAMED KALIMBA RESPONDENT

RULING

Date of last Order: 09/08/2022

Date of Ruling: 09/08/2022

MLYAMBINA, J.

The Applicant through Counsel Augustino Mahenge has moved this Court by way of Chamber Summons made under *section 25 (1) (b) of the Magistrates' Court Act [Cap. 11 R.E. 2019]* seeking for an extension of time within which the Applicant may file an appeal to challenge the decision of the District Court of Songea in *Civil Appeal No. 14 of 2021* which originated from *Civil Case No. 68 of 2021 at Mfaranyaki Primary Court*. The application has been taken out on the grounds and reasons set forth in the affidavit sworn by the Applicant one Mikaela Muhoro.

The major reasons are: *One*, the Applicant was the appellant in *Civil Appeal No. 14 of 2021* the appeal which originated from *Civil Case No. 68 of 2021*. *Two*, the Judgement of the said Civil Appeal was delivered on 15/12/2021 before Hon. L. B. Lyakinana – PRM. *Three*, the

Applicant was not satisfied with the Judgement hence he wrote a letter requesting for the copy of Judgement and decree so as he may file his second appeal to this Court. *Four*, the Applicant had to wait until 14/02/2022 when he was supplied with the copy of Judgement and Judgement in which the time to file an appeal to this Court elapsed. *Five*, the delay is not deliberately on the side of Applicant but due to the facts that she was not supplied with the copy of necessary documents timely so as she may take further step properly and within time. *Six*, the judgement is bearing conspicuous errors. *Seven*, it is also in the terms of the illegality of the decision that from prompted the Applicant to intend to appeal against the same. *Eight*, the Court has wide and inherent power to condone the elapsed material time. *Nine*, the delay in filing the same has been not intentional neither wanton nor deliberate. *Ten*, it will be in the interest of justice that the order sought in chamber summons is granted. *Eleven*, if the application is not granted the Applicant will suffer irreparable loss economically and psychologically.

In his counter affidavit, the Respondent denied the Applicant's allegation and asserted that, even if the Applicant was supplied with the copy of Judgement on 14 day February 2022, still she ought to explain in her Affidavit as to why this application has been filed on 12 day of May 2022 three months later after obtaining the copy of Judgement.

Thus, the Applicant had a duty to prove reasons for delay for all days which she delayed to appeal in time caused by delay of the Court to supply necessary documents in time. The Respondent went on to aver that the errors of the Judgement does not automatically attract the violation of rules of appealing to challenge that Judgement.

At the hearing, the Applicant was represented by Counsel Augustino Mahenge. The Respondent was unrepresented. Apart from the reasons stated in the supporting affidavit, Counsel Augustino cited the case of **Republic v. Yona Kakonda and 9 Others** [1985] TLR 84 in which at page 85 it was insisted that in an application of this nature, the Court should look not only the delay but also other factors. The Court stated:

(ii) In deciding whether or not to allow an application to appeal out of time, the Court has to consider whether or not there is sufficient reasons not only for the delay but also sufficient reason for extending time during which to entertain the appeal.

As regards the reason of illegality and the Judgement bearing conspicuous errors, Counsel Augustino stated that this case arose from Criminal case. It went to the Primary Court of Mfaranyaki as a Civil Case. He cited the case of **Director of Public Prosecutions v. Amina Talib**

Mselem and 5 Others, Criminal Appeal No. 561 of 2016 Court of Appeal of Shinyanga at page 11 – 12 where it was stated:

The learned Judge was of the view that the appellant ought to have made a follow – up so that he could file the appeal within the prescribed period from the date when the certificate copies were ready for collection. She was of the view that, since the prescribed period of 45 days had elapsed from the date when the copies were certified, the appellant should have applied for extension of time to institute his appeal out of time. She cited this Court's decision in the case of **Aidan Chale v. Republic, [2005] T. L. R. 76** as authority that, where an appellant' delays to file an appeal he should first apply for extension of time to file it out of time...

"It is logical that the Respondent could not be blamed for not collecting the copies on the *absence of proof of any notification* by the Registrar that copies of the documents are ready for collection." [Emphasis added].

Counsel Augustino went on to cite the case of **Christoper Ole Memanyoki v. Trade and Sellers (T) Ltd**, Civil Application No. 319/02 of 2017 (unreported). According to Counsel Augustino, the delay of three Months from February, 2022 to May, 2022 was for the preparation of the application and appeal.

Counsel Augustino called upon the Court to consider two other reasons. *First*, he right of appeal is the Constitutional right. *Second*, his client is a lay person. *Section 14 of the Law of Limitation Act [Cap 89 R.E. 2022]* exempts lay person. He however conceded that he was engaged by the Application since on 28/12/2021 and that it is him who advised her to lodge this application.

I have dutifully considered the affidavit evidence submission of both parties. At the onset I must state that the Applicant has not adduced sufficient reasons to warrant grant of this application. In the case of **Allison Xerox Silla v. Tanzania Habours Authority** Civil Reference No. 14 of 1998 Court of Appeal of Tanzania at Dar es Salaam (unreported) as quoted by my brethren Honourable Arufani Judge in **AG v. Masumin and Another**, Misc. Civil Application No. 11/2015 High Court Dar es Salaam (unreported) at page 9 it was stated *inter alia* that:

"...where an extension of time is sought consequent to a delay the cardinal question is whether sufficient reason is shown for the delay; other considerations such as the merit of the intended appeal would come in after the Applicant has satisfied the Court that the delay was for sufficient cause."

Above all, the Applicant has not accounted delay in filling this application due to the following reasons: *First*, it is not in dispute that

the impugned decision in Civil Appeal was delivered on 15/12/2021. *Second*, the Applicant engaged Counsel Augustino on 28/12/2021. *Third*, the Applicant was supplied with the copy of judgement on 14/02/2022. *Fourth*, there is no good tell as to why the Applicant stayed idle up to 12th May, 2022 when she filed this application.

Generally, the Applicant failed to account for each day of delay for the period of not less than three months. It is the requirement of law that each day of delay must be accounted for one to succeed in an application for extension of time. In the case of **The International Airline of the United Arab Emirates v. Nassorro**; Civil Application No. 263 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported) at page 7 it was found that the consideration in granting application for extension is to assess whether the extension of time has been brought promptly as well as whether there was diligence on the part of the Applicant. Again, in the case of **Tanzania Coffee Board v. Rombo Millers Limited**, Civil Application No. 13 of 2015 (unreported) the Court of Appeal of Tanzania held that:

Extension of time should be considered on two grounds; that every day must be accounted for which the Applicant did; and the reason for the delay must be sufficient...

Other cases requiring accounting for each day of delay includes but not limited to the case of **Kombe Charles Richard Kombe v. Kinondoni Municipal Council**, Civil Application No. 379/01 of 2018 Court of Appeal of Tanzania, (unreported), **Tanzania Fish Processors Limited v. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018, Court of Appeal of Tanzania, Mwanza (unreported).

In this case, it not appealing to me as to how Counsel Augustino could prepare the application and appeal from February, 2022 to May, 2022. It reveals untold laziness on the part of the Counsel which cannot constitute a good ground for extension.

Even if I agree with the Applicant that there is illegality in the impugned decision, it must be recalled that illegality is subject to diligence as it was held in the case of **National Housing Corporation v. Ettiens Hotel**, Revision No. 10 of 2005, Court of Appeal of Tanzania (unreported). The Applicant in this case has not established that she was diligent in pursuing her appeal rights.

Further, there are no proof in record that the Applicant was obstructed with good reasons to lodge the application on time. The defence on ignorance of the law on the part of the Applicant who is represented cannot be a good ground of extension of time. In the

Case of **Omari R. Ibrahim v. Ndege Commercial Services Limited**, Civil Application No 83/01 of 2020. (unreported), Court of Appeal of Tanzania, it was explained that:

*It should be stated once that, neither ignorance of the law nor counsel's mistake constitutes good cause in terms of Rule 10 of the Rules. (See **Bariki Israel v. The Republic**, Criminal Application No. 4 of 2011 and **Charles Salungi v. The Republic**, Criminal Application No. 3 of 2011 (both unreported)). In the case of **Umoja Garage v. National Bank of Commerce**, [1997] TLR 109, the Court stated that lack of diligence on the part of the counsel is not sufficient ground for extension of time. In the current application, the record speaks loudly that the Applicant was negligent on the path he chose which culminated into inordinate delay which he failed to account for. For the foregoing and taking into consideration the circumstances pertaining in the current application, it is my view that no good cause has been shown by the Applicant to warrant extension of time sought. In the final result, this application is devoid of any merit and the same is dismissed with costs.*

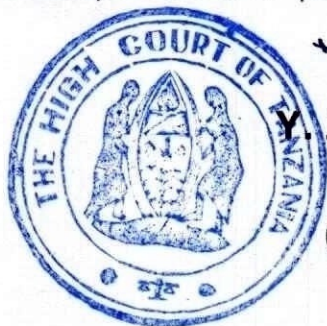
In the premises, the Applicant and her Counsel have miserably failed to adduce sufficient reasons for this Court to grant the application.

For that reason, the application is hereby marked dismissed with costs for lack of merits.



Y. J. MLYAMBINA
JUDGE
09/08/2022

Ruling delivered and dated 9th day of August, 2022 in the presence of the Applicant and her Counsel Augustino Mahenge and the Respondent in person.



Y. J. MLYAMBINA
JUDGE
09/08/2022