

**IN THE HIGH COURT OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 153 OF 2022**

(From the Original Civil Case No. 124/2020)

**JAMES MASULUBE MBOGO .....APPLICANT**

**VERSUS**

**MGEN TANZANIA INSURANCE CO. LTD.....RESPONDENT**

**RULING**

**MRUMA,J.**

This is an application by way of chamber summons which was presented for filing on 12<sup>th</sup> April 2022. The application is premised on section 14 of the Law of Limitation Act [cap 89 RE 2019] and section 95 of the Civil Procedure Code [cap 33 RE 2019]. The Applicant Mr. James Masulube Mbogo seeks one order which is that this court be pleased to extend the time required to file the appeal to this court against the decision of the Resident Magistrate Court of Dar es Salaam at Kisutu in Civil Case No. 124 of 2020 (Ruboroga PRM) which dismissed his suit on ground that it was time barred

The grounds in support of the application are set out on the face of the application and in a supporting affidavit sworn by the Applicant James

Masulube Mbogo himself. It is stated that the Applicant was involved in accident which occurred on 29<sup>th</sup> August 2012. The said accident caused him to sustain brain injuries which led to suffer both physically and psychologically. The argument by the Applicant therefore is that his failure to attend court session was a result of his mental condition which at the time required a very calm and quite place and he had no legal representative.

The application was opposed by way of a counter – affidavit sworn by a principal officer of the Respondent one Ernest Joseph Kilumbi. He deposed that the Applicant had legal representation of an advocate one Mr. Wilson Edward Ogunde who argued against a preliminary objection in Civil application No. 124 of 2020. Further that the Applicant was following up the matter through his advocate.

At the hearing of the application the Applicant appeared in person and was not represented. The Respondent was represented by Mr. Nuhu Haule, learned advocate.

The Applicant submitted that the reason why he delayed in filing an appeal against dismissal order is that after his advocate had refused to represent him he went to the Regional Commissioner of Dar es Salaam who directed him to seek legal assistance from the University of Dar es Salaam whose officer prepared this application for him. It was further

submission of the Applicant that another reason which caused him to delay is that after the accident he had to go back to his home village where he lost his uncle in March 2022.

On his part, Mr Nuhu Haule argued this Court to dismiss the application because it is not true that the Applicant had no legal representation of Mr. Wilson Ogunde of Brotherhood Law Attorneys who made submissions on his behalf in March 2022.

Regarding the Applicant's second ground which touches his health it was the submissions of the counsel for the Respondent that it has not been substantiated.

I have considered the Applicant's application, the grounds in support thereof as well as the law. The principles upon which the court determines an application for extension of time are well settled. The court considers the length of delay; the reason for the delay, and possibly the chances of success of the intended appeal or application as the case may be. The court also must take into consideration the degree of prejudice that would be occasioned to the Respondent if the application is granted. The power to extend time under section 14(1) of the Law of Limitation Act is a discretionary one. However, like any other discretionary powers it must be exercised judiciously and on sound factual and legal basis.

There is no doubt that the Applicant was involved in the accident on 29<sup>th</sup> August 2012. Eight (8) years later, ie in 2020 he instituted Civil Suit No. 124 of 2020 at the Resident Magistrates Court of Dar es salaam at Kisutu. That suit was dismissed for being time barred on 24<sup>th</sup> Ma 2021 and this application was presented for filing on 12<sup>th</sup> April 2022 which is a period of about 12 months. Section 25(1) (b) of the Magistrates Court's Act any part aggrieved b the decision or order of a district court may within thirty days after the date of the decision or order appeal to the High Court.

As stated herein before, this application was presented for filing after about 360 days after the date of the decision and orders of the District Court. The Applicant's explanations about this delays all twofold.one; he asserts that he was seriously injured in an accident which occurred on 29<sup>th</sup> August 2012 and two; that he had no legal representation to follow up his case.

As it has turned out both grounds have not been substantiated. There is no evidence to show and prove that in 2020, which is eight (8) years after the Appellant was involved in the accident, he was still suffering inability as the consequences thereof. No evidence in terms of medical clut and/ or medical prescptions which suggest that eight years


after the accident the Appellant could not make a follow up of his court case.

Secondly as correctly submitted by the counsel for the Respondent and supported by the records of Civil Case No. 124 of 2020 of the Resident Magistrate Court of Dar es Salaam at Kisutu, all along the Applicant was duly represented by Mr. Wilson Ogunde, learned advocate from Brotherhood Attorneys. Thus, the delay in filing an appeal within the prescribed period has not been explained at all.

That said, it is my finding that this application was preferred without any cause, let alone good cause. It is therefore dismissed. Measuring economic weight of the parties from their pleadings and representation, I will make no orders as to the costs.

Order accordingly.



  
A. R. Mruma

**Judge**

**1/8/2022**

**1/8/2022**

Coram: Hon. A. R. Mruma,J

For the Applicant: Present

For the Respondent: Absent

Cc: Delphina

**Court:** Ruling delivered in presence of the Applicant but in absence of the Respondent and their advocate this 1<sup>st</sup> day of August, 2022.



  
A. R. Mruma

**Judge**

**1/8/2022**