

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

MISC. CIVIL APPLICATION CASE NO. 12 OF 2021

*(Originating from Misc. Civil Application Case No. 9/2020 Tabora
Resident Court) Court in Civil Case No. 25/2016*

SAID SHABANI KICHEKERO.....APPLICANT

VERSUS

ASHURA SAID MKOBA Administratrix of the estate of the late

HAMIDU KABEYS KATOSHO.....RESPONDENT

RULING

Date: 15/6/2022 & 12/8/2022

BAHATI SALEMA,J.:

The applicant herein **SAID SHABANI KICHEKERO** filed an application for an extension of time to file an appeal out of the prescribed time against the decision from Misc. Civil Application No. 9 of 2020 which was delivered on 9/3/2021.

The application was made under section 14 of the Law of Limitation Act, Cap. 89 [R. E 2019], and it is also supported by the Affidavit of Said Shaban Kichekero.

The grounds as deposed in the affidavit upon which extension of time is sought run as follows;

1. That the applicant failed to appeal on time against the said decision due to the fact that he was not aware if the court already delivered the ruling which is against him.
2. That the applicant had an advocate to defend Misc. Civil Application No. 9 of 2021 in which the applicant lives in Kigoma Region and his financial capacity was not easy to attend whenever the matter was scheduled for hearing or mention.(sic)
3. That the advocate engaged by the applicant did not update the status of the case timely and at the time the applicant comes to Tabora he found that the matter had already been delivered and he was out of time to Appeal hence this application.
4. That at the time the applicant comes before the court Tabora means on 19/04/2021 found out that the matter is already decided and on the same date the applicant wrote a letter to be supplied with the ruling in which his current advocate found out that the matter was dismissed and he was out of time to appeal as the was aggrieved by Ruling said above hence this application.
5. That the reason not file the appeal out of time was not the applicant's negligence but rather due to the explained

circumstance which was inevitable to the side of the applicant. As the extension is a discretion of the court what has been explained will grant our application.

In his counter-affidavit, the respondent Emmanuel Musyani vehemently disputed the application and required the applicant to account for each day of his lateness.

When the application was called for hearing, the applicant was represented by Ms. Flavia Francis whereas the respondent by Emmanuel Musyani, both learned counsels. By leave of the Court, the arguments for and against the application were made by way of written submissions. I have duly considered the rival submissions.

Having heard both parties the issue is whether the applicant has shown sufficient reasons for his delay.

The position of the law is clear that the court may for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or application. That position of the law has been expounded in such cases including the case of **Mumello V/S Bank Of Tanzania (2006) IEA 227 (CAT)** where it is a settled principle of the law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only

be granted where it has been sufficiently established that the delay was with sufficient cause.

Having perused the records and the substance of the submission, among the reasons laid down by the applicant was that he was not aware if the court already delivered the ruling and the applicant's advocate did not update the status of the case timely.

As rightly submitted by the respondent that the applicant had not adduced good cause for his delay to file his appeal against the decision, the applicant had no valid explanation that he tried to call his advocate, and there is no proof therefore the silence on part of the applicant is an indication that he was not diligent to pursue the case.

As stated in paragraph 3 of the affidavit there is no single explanation of this period, among the sufficient reasons that if the applicant does not know the proper way forward be as a sufficient factor to grant an extension of time.

It is settled law that, in an application for an extension of time, the applicant has to account for each day of the delay. In this application at hand, paragraph 3 of the Affidavit *that at different times I tries(sic) to communicate with my advocate but he did not respond which cause to lose my truck (sic) , then I stated to prepare financially for the Tabora trip in order of making a follow up of my case . I reached*

at Tabora on 18 April, 2021 and on 19/4/2021 when I come before the court for follow up I find out that the case is already decided since 9/3/2021 which means I was out of the prescribed time to appeal. (sic).

As correctly submitted by the respondent the fact that he was not aware if the court had already delivered the ruling against him amounts to a lack of diligence and ignorance of the law. Hence that lack of diligence and ignorance of the law is not a good reason for the extension of time. See the case of **Zebitis Kawuku Vs Karimu (1938) 5 ECCA 37** where it was held that;

“Ignorance of the law, old age, and lack of means are not good ground for allowing appeal out of time”

This court guided by the principle laid down in the case of **Lyamuya Construction Company Ltd Vs Board of Registered of Young Women's Christian of Tanzania Civil Application No. 2 of 2010 [unreported] CAT Arusha Registry** in which the Court of Appeal laid down the following guidance's to be contained in the affidavit to wit:- (a) *The applicant must account for all the period of delay. (b) The delay should not be inordinate. (c) The applicant must show diligence and not apathy' negligence or sloppiness in the prosecution of the action that he intends to take. (d) That, if the court feels there are other sufficient reasons, such as the illegality of the decision sought to be challenged.*

Again, it should be noted from the case of **Sebastian Ndaula Vs. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa), Civil Application No. 4 of 2014, CAT at Bukoba [unreported]** Juma, J.A held that:-

"The position of this court has constantly been to the effect that in an application for extension of time, the applicant has to account for every day of the delay."

The need to account for each day of the delays becomes even more important where matters like in the present application were delayed for 2 months as noted **by the respondent**. Under this application, the applicant has failed to account for each day of delay.

Applying the principle laid down above and upon my examination of the annexures provided I will not differ with the respondent at the outset, this application for extension of time was filed on 17/5/2021, hardly after a lapse of 2 months, the time of which was not counted for by the applicant in his affidavit.

Based on the above reasons and authorities, I find the applicant has not adduced sufficient reasons warranting the grant of application. It is accordingly dismissed with no order as to cost.

Order accordingly.

Bahati

A. BAHATI SALEMA

JUDGE

12/8/2022

Ruling delivered under my hand and seal of the court in the Chamber, this 12th day of August, 2022 in the presence of both parties.

Bahati

A. BAHATI SALEMA

JUDGE

12/8/2022

Right to appeal is hereby explained.



Bahati

A. BAHATI SALEMA

JUDGE

12 /8/2022