

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. CIVIL APPLICATION NO. 5 OF 2022

(Originating from Civil Appeal No. 30 of 2017 in the Resident Magistrate's Court of Arusha at Arusha)

ANGLEBERT PANTALEO MREMA APPLICANT

Versus

H & A UNIQUE SAFARI 2000 LIMITED RESPONDENT

RULING

20th July & 12th August 2022.

Masara, J.

This Application for extension of time arises from the judgment and decree of the Resident Magistrate's Court of Arusha ("the trial Court") in Civil Case No. 30 of 2017 delivered on 29/04/2021. **Mr Anglebert Pantaleo Mrema** ("the Applicant") was the Defendant therein, while the Respondent herein was the Plaintiff. The Respondent had sued the Applicant for a number of reliefs, the main ones being: an order of permanent injunction, payment of specific damages, general damages plus interests. The trial magistrate was satisfied, on the strength of the evidence before the trial court, that the Respondent proved its claims against the Applicant. In its judgment, the trial Court issued a permanent injunction against the Applicant and ordered him to pay the Respondent specific and general damages, including costs of the suit. This decision



did not please the Applicant; however, he could not appeal on time due to a number of reasons. He has preferred this Application seeking for extension of time to enable him to challenge the decision of the trial court before this Court. The Application is supported by the affidavit of Anglebert Pantaleo Mrema filed in Court on 18th January 2022. The Respondent opposed the application as evidenced in the counter affidavit of one Asubuhi John Yoyo filed in Court on 23rd February, 2022.

During hearing, the Applicant was represented by Mr Shedrack Boniface Mofulu, learned advocate, while the Respondent was represented by Mr Asubuhi John Yoyo, learned advocate. By consent, hearing proceeded through filing of written submissions.

Submitting on behalf of the Applicant, Counsel for the Applicant relied on the affidavit of the Applicant to support the assertion that there were sufficient grounds warranting extension of time to enable the Applicant to lodge an appeal against the decision of the trial court. Essentially, Counsel contends that the delay was occasioned by no faults of the Applicant. That, in accordance with Order XX Rule 20 of the Civil Procedure Code, Cap. 33, the Applicant was to be furnished with certified copies of judgment and decree, upon request, to enable him to process an appeal

in time. The learned counsel stated that letters requesting for the said documents were filed on time but that it was not until 14/11/2021 when a copy of the judgment was served on him. Further, that when the Applicant eventually obtained copies of judgment and decree on 30/11/2021, it became apparent that a copy of the judgment issued to him was not similar to the one issued to the Respondent, implying that there were two different judgments in one case.

Counsel for the Applicant further submitted that, the Applicant could not immediately file an appeal as it was during Court vacation that he went to seek for legal assistance. That, the Applicant eventually obtained legal assistance in January, 2022 but by then the time to lodge an appeal had expired, necessitating this Application for extension of time. In his view, the affidavit in support of the Application present serious legal and arguable issues warranting the scrutiny of this Court on appeal. Several authorities were referred to; including, Court of Appeal decisions in **Zuberi Mussa vs Shinyanga Town Council, Civil Application No. 3 of 2009** (unreported); **Kalinga and Company Advocates vs National Bank of Commerce Limited [2006] TLR 235** and **Principal Secretary, Ministry of Defence and National Service vs Devram**



Valambhia [1992] TLR 182. Counsel, thus, urged the Court to allow the Application as craved.

On his part, Counsel for the Respondent, also relying on the strength of the counter affidavit, arduously opposed the Applicant's grounds for the delay. In his view, the Application is "*hopelessly unfounded and devoid of any merits*" to deserve condonation by this Court. Counsel for the Respondent urged the Court to dismiss the Application as the Applicant did not account for every single day of delay as mandated by law and that the delay was inordinate. Regarding the alleged illegalities and overwhelming chances of success, it was Mr Yoyo's view that such assertions are unsubstantiated as there are no attachments to prove the same. Further, that the presence of an arguable case alone should not be a reason to extend time. Mr Yoyo relied on decisions of the Court of Appeal in **Tanzania Fish Processor vs Christopher Luhangula, Civil Application No. 161 of 1994; Blueline Enterprises LTD vs East African Development Bank, Misc Civil Application No. 133 of 1995; Daudi Haga vs Jenitha Abdan Machaniu, Civil Reference No. 1 of 2000 Regional Manager, TANROADS Kagera vs Ruaha Concrete Company Limited, Civil Application No. 96 of 2007** (all unreported) and **Mbogo vs Shah [1968] EA 93.**

I have considered the affidavits of the parties as well as the rival submissions filed by Counsel for the parties. The issue for determination is whether the Applicant has advanced sufficient reasons to warrant the extension of time sought.


Sufficient cause for the delay is *conditio sine qua non* for an application for extension of time to be granted. In the case of **Lyamuya Construction Company Limited vs Board of Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2010**, guidelines for courts to take into consideration in extending time were established by the Court of Appeal. It was *inter alia* held:

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

The question before me is whether the Applicant is covered by the above established parameters so as to warrant him the extension of time sought.

In the Applicant's affidavit, the main reason for the delay is that he was



not furnished with copies of judgment and decree on time despite repeated demands. That, after the judgment was delivered on 29/04/2021, his Advocate wrote a letter on 10/05/2021 asking for copies of judgment, proceedings and decree. On 23/07/2021, through the same Advocate, a reminder letter was written but again in vain. That, he eventually obtained a copy of judgment on 14/09/2021. The Affidavit further provides that on 19/11/2021 he was served with a "copy of Execution attached with the Judgment and the Decree of the Court" by the Respondent. That, he continued to make follow ups of the documents until he was furnished with the same on 30/11/2021 only to find that the judgment served to him on 14/09/2021 was not the same with the one served on him later.

I have scrutinised the two copies of judgment allegedly served on the Applicant on two different dates. The last pages of the two alleged judgments appear different both in terms of contents and even the font used. It is also apparent from the two copies that the said judgments were certified on the same date the judgment was issued; that is, on 29/4/2021. The Respondent disputes the allegations of fact but does not comment on the differences in the two versions of the judgment other than branding them as "the Applicant's own creation".

As correctly pointed out by Counsel for the Applicant, an appeal to this Court has to be accompanied with certified copies of the judgment and decree of the trial Court. This Court and the Court of Appeal have in a number of occasions enlarged time to an applicant whose appeal was delayed due to non or late supply of a copy of judgment or decree. The Law of Limitation Act, Cap. 89 [R.E. 2019] exempts days spent to get copies of judgement and decree from the computation for purposes of limitation. Section 19(2) thereof states:

*"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, **and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed**, shall be excluded."* (Emphasis added)

Various decisions, including **National Bank of Commerce vs Lucia Sixbert Chuwa, Land Appeal No. 51 of 2010** (unreported) and **Mary Kimaro vs Halfani Mohamed [1995] TLR 202** applied the said provision to enlarge time to applicants. It follows, therefore, that because copies were applied within the prescribed time, the time from the date of judgement of the trial court to the time the certified copies and judgment were supplied to the Applicant may be excluded from the computation of time for appeal purposes.



Copies made available to this Court indicate that judgment was certified on the date the same was pronounced, while the Decree thereof was issued on 5th July 2021. The Applicant did not attach any evidence that he was not supplied with the documents on the dates he mentions in the affidavit. The Respondent, similarly, does not categorically state when the documents were supplied to him. Going with the authorities above stated, the Applicant is entitled to an exclusion of the time up to when the Decree was ready for collection; that is, 5th July 2021. The question is whether the certified Decree was ready on 5th July, 2021. On record is a letter addressed to the Resident Magistrate In charge, Arusha, dated 23rd July 2021, which the Court acknowledged receipt on 26th July, 2021. The letter was requesting for supply of the judgment and decree, also serving as a reminder of the previous communication. If the documents were ready on 5/7/2021, one wonders why a reminder letter was written about three weeks later. On the premises, the Applicant is entitled to the benefit of doubts. I would, therefore, exclude days from the date of judgment up to the time he was allegedly served with Execution documents; to wit, 19/11/2021. I would therefore hold that those days are explainable and excusable.

The Applicant alleges that after he was served with the Execution documents, he continued to make a follow up of the judgment and decree and that the said documents were furnished to him on 30th November, 2021. As earlier stated, there is no document to support this assertion. Even if this was to be taken as true, yet the Applicant has not sufficiently accounted for the days running from 1st December, 2021 to 18th January 2022. The reason advanced relating to closure of offices of advocates due to Court vacation are insufficient. There is no scintilla of truth that advocates close offices from 1st of December. In any case, time spent to look for an advocate does not amount to good cause for delay as was stated in **Azizi Mohamed vs Republic, Criminal Application No. 84/7 of 2019** (Unreported).

Therefore, regarding the reasons for the delay, I am in agreement with the submission by Counsel for the Respondent that the Applicant has failed to show that he was diligent in pursuing her appeal. Having received the necessary documents, the Applicant made no sufficient efforts to challenge the impugned decision of the trial court. The delay of at least 48 days remains unaccounted for.

The other ground relied for by the Applicant is the illegality apparent in the decision of the trial Court. Counsel for the Respondent countered this

assertion asserting that the claims of illegality and overwhelming chances of success are unsubstantiated as there are no attachments to prove the same. With due respect to the learned Advocate, it is not true that the Applicant did not elucidate the illegalities in question. The affidavit contains statements showing that there are two versions of judgment from the trial court. Further, the Applicant attached an intended petition of appeal containing 6 grounds. It is a celebrated principle of our jurisprudence that illegality of impugned decision is sufficient ground for extension of time. The case of **Kalunga and Company Advocates vs National Bank of Commerce** (supra) is instructive in this aspect, where the Court of Appeal observed:

*"Since the point at issue is one alleging the illegality of the decision being challenged i.e the validity of the High Court's decision in interpreting a statutory provision and the propriety of a judge raising an issue suo motu, and making a decision without the parties concerned being heard upon it, **sufficient reason has been shown for granting an extension of time** to file application for leave to appeal to the Court of Appeal."*

Further, where a party raises illegality as a ground for extension of time, such illegality has to be apparent. This position has been restated in a number of cases including the Court of Appeal decision in **Samwel Munsiro vs Chacha Mwikwabe, Civil Application No. 539/08 of 2019** (unreported), which held:

*"As often stressed by the Court, for this ground to stand, **the illegality of the decision subject of challenge must clearly be visible on the face of the record, and the illegality in focus must be that of sufficient importance.**" (emphasis added)*

See also: **The Principal Secretary, Ministry of Defence & National Service vs Devram P. Valambhia** (supra), **Kalunga and Company Advocates vs National Bank of Commerce** (supra) and **Lyamuya Construction Company Limited vs Board of Trustees of Young Women's Christian Association of Tanzania** (supra).

In the circumstances of this Application, the illegalities to be challenged once the extension is granted include variance of the judgments furnished to the parties herein. As noted earlier, the last page which contains the amount awarded as general and specific damages differ. In the absence of the original records, I consider this to be an issue that this Court may need to address once it is availed with the appropriate records.

Consequently, good cause for enlargement of time has been shown; to wit, the purported illegality of the impugned decision which requires the attention of an appropriate forum. I, therefore, allow the Application for extension of time within which the Applicant may file his intended appeal to this Court against the judgement and decree of the Resident



Magistrate's Court of Arusha in Civil Case No. 30 of 2017. The Applicant to lodge the same in Court within 30 days from the day of this Ruling. Each party to bear their own costs for this Application.

It is so ordered.



A handwritten signature in dark ink, which appears to read 'Y. B. Masara', is written over a horizontal line.

Y. B. Masara

JUDGE

12th August 2022