

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 278 OF 2021

(Originating from Criminal Case No. 38 of 2019)

NURDIN SHAIBU APPLICANT

VS

OMARY KHALFAN.....RESPONDENT

Date of last Order: 27/06/2022

Date of Ruling: 29/06/2022

RULING

MGONYA, J.

This Court has an application for an extension of time pending before it. The Applicant herein has moved this Court by the provisions of **section 14(1) of the Law of Limitation Act Cap. 89 [R.E.2019]**, and **section 25 (1) of the Magistrate's Court Act Cap. 11 R.E. 2019**.

The Application filed before this Court is supported by an affidavit that has been sworn by **Lawrence Jackson Mwasanga** Counsel for the Applicant dully instructed to do so.

When the matter was scheduled for hearing the same was heard *Ex parte* since the Respondent after being dully served did not appear before the Court for hearing. It is from there, this

court then ordered the matter be heard by way of written submission. The Applicant then filed his written submission hence this decision.

The Applicant in his submission avers that he seeks an extension of time to file his appeal out of time based on the reason that, when the decision was delivered before the Temeke District Court on the 17/09/2020, the Applicant thought that copy of judgement and proceedings were necessary requirements to lodge an appeal before the High Court.

It was from that thought, that the Applicant then began battling with for copies of judgement and proceeding and it is this process that led to his delay. However, after obtaining the said records an appeal was filed and assigned before Hon. Itemba J, who struck out the same for being time barred with an option for the Applicant to seek for an extension of time hence this Application.

It is in the written submission that the Applicant went further in discussing the grounds of appeal of which the Court finds the same to be premature and that part of the submission will not detain me to address.

Having carefully gone through the Chamber Summons, Affidavit and submission, I find prominent to remind ourselves on the aspect of extension of time of essence. It is the

jurisprudence of our jurisdiction that the discretion of granting an extension of time lies within the powers of the Court and that the same has to be judiciously exercised. The same is also granted upon the Applicant adducing sufficient reasons thereto.

An extension of time has been reiterated by the Court in a series of cases that have laid down the principles to be abided with for the Court to grant the same. In the case of ***PARADISE HOLIDAY RESORT LIMITED VS THEODORE N. LYIMO, Civil Application No.435/01 of 2018*** it was stated that:

"...but the Court consistently considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is point of law sufficient importance such as the illegality of the decision sought to be challenged".

Not only the above case has provided rules on granting an extension of time but also the case of ***Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010*** where it was stated that for an extension of time to be granted the following ought to be done:

(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) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.***

From the application before this Court, I find that the applicant delayed from 17/09/2020 date of judgement to the date when the appeal was filed before the Court that is 15/01/2021. Moreover, having been given a chance to seek an extension the Applicant states that he thought copies of judgement and proceedings were a requirement to lodge an appeal.

From the reason stated above, I am of the firm view that such a reason is not sufficient nor reasonable enough to cure the omission and warrant a grant for an extension of time. The laws of this Country have been enacted not as ornaments but for the purpose of complying with the same. From the above I find that the reason advanced by the Applicant is based on ignorance of which has no legal status before the eyes of the law.

Having said all of the above, **I find that this application is meritless and is hereby dismissed.**

Basing on the nature of the matter being heard *Ex parte*,
no costs are awarded.

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

29/06/2022

Court:

Ruling delivered before Honourable **A.H MBADYO AG**
-DEPUTY REGISTRAR in the presence of Applicant,
in the absence of the Respondent and Ms. Veronica
RMA on 29th June, 2022.



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L. E. MGONYA

JUDGE

29/06/2022