

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

MISC. CIVIL APPLICATION NO. 30 OF 2022

(Originating from Civil Case No. 04/2019 of the Resident Magistrate Court of Kagera)

GODFREY OCHI.....APPLICANT

VERSUS

AMOS NDAMWESIGA MWIJAGE.....RESPONDENT

RULING

01st September & 1st September 2022

Kilekamajenga, J.

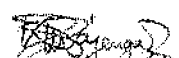
The applicant moved this Court by way of chamber summons seeking to enlarge time to file an appeal. The application was made under **section 14 (1) of the Law of Limitation Act, Cap. 89 RE 2019** and the same is supported with an affidavit of the applicant. In response, the respondent filed a counter affidavit resisting the application. Finally, the parties appeared to fend the application. The applicant, who appeared in person, was also represented by the learned advocate, Mr. Alli Chamani. The respondent appeared in person and without legal representation. In advancing the reasons for the delay, the counsel for the applicant narrated a brief background of this application thus; the applicant filed an initial appeal No. 06 of 2020 which was filed in time on 05/03/2020 but the same was struck out on 22/03/2022 on the reason that the decree accompanying the appeal was defective. The applicant went back to the trial Court to rectify the decree and the corrected decree was issued on 27/06/2022.



On 08/07/2022, the applicant filed the instant application. Mr. Chamani argued that, the initial appeal was struck out on technical reasons though the applicant has been diligent in prosecuting his case. The counsel averred further that there are chances of success of the appeal if the application is granted. Chances of success of an appeal is a ground for extension of time as it was stated in the case of **Gibb Eastern Africa Ltd v. Syscon Builders and two others, Civil Application No. 05 of 2005**. He urged to allow the application and the costs thereof to follow in the course.

The respondent, on the other hand, argued that the applicant has failed to account for each day of delay as the law requires. He further argued that, he does not see any chances of success in the appeal if the application is allowed. He further assailed the counsel for the applicant for misleading the Court on whether the initial decree was defective. In his view, the initial appeal was proper but the counsel for the applicant is employing some delaying tactics causing inconveniences to the parties. However, joined hand with the prayer to allow the application.

When rejoining, Mr. Chamani blamed the erstwhile counsel for the respondent who raised the issue of defectiveness of the decree albeit, this Court also picked-up that issue *suo moto* prompting the applicant to withdraw the appeal. Mr. Chamani reiterated the prayer to allow the application.



In this application, as already pointed out, the applicant seeks an order for extension of time to allow him file an appeal to challenge the decision of the Resident Magistrates' Court of Bukoba. I wish to reiterate the already established principle of the law on extension of time. An application of this kind falls with the discretion exercised by the Court. The Court may enlarge time where the applicant has advanced sufficient cause or good reasons for the delay. See, the cases of **Sospter Lulenga v. Republic, Criminal Appeal No. 107 of 2006**, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003**, Court of Appeal of Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others [1973] EA 207**.

There is, however, no clear definition on what amounts to **sufficient cause** or good reason for the delay. Therefore, before granting extension of time, the Court has to consider several circumstances and reasons advanced by the applicant. In this case, it is undisputed fact that the applicant had initially filed an appeal in time. The same appeal was struck out for being accompanied with a defective decree. The applicant went back to the trial court to seek for a correct decree and thereafter filed the instant application. In my view, the applicant cannot be condemned for negligence or inaction. The reason for the delay in the instant application falls under the category of **technical delay** which amount to sufficient cause for the delay. This court in the case of **The Registered**



Trustees of the Redeemed Assemblies of God in Tanzania (TAG) v. Obed Heziron Sichembe and The Registered Trustees of Tanzania Assemblies of God (TAG), Misc. Land Application No. 82 of 2020, HC at Mbeya listed the conditions for the application of technical delay thus:

- 1. That, prior to the application for extension of time under consideration of the court, the applicant must have timely filed in court a matter or matters for some reliefs.*
- 2. That, the matter/s previously filed by the applicant (mentioned under the first paragraph above), must have been struck out for incompetent before the application for extension of time was instituted.*
- 3. That, subsequent to the striking out of the previous matter, the applicant must have filed in court the application for enlargement of time (envisaged under the first paragraph above) for instituting a competent matter out of time which will seek the same relief/s as those which were sought in the previous matter that had been struck out.*
- 4. That, the applicant must have promptly and diligently filed in court the application for enlargement of time (envisaged under the first and third paragraphs above) upon the previous matter being struck out.*

As long as the initial appeal was filed in time though struck out for being incompetent, the applicant has good reason for lodging the instant application so as to allow him to file a new appeal. For that reason therefore, I hereby allow the application. I further direct the applicant to file his appeal within 14 days from the date of this order. Costs should follow in the course of prosecuting the case. It is so ordered.

Dated at Bukoba this 01st Day of September 2022



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Ntemi N. Kilekamajenga

JUDGE

01/09/2022

Court:

Ruling delivered this 01st September 2022 in the presence of the applicant and his counsel, Mr. Alli Chamani; the respondent was present in person. Right of appeal explained to the parties.



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Ntemi N. Kilekamajenga

JUDGE

01/09/2022

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