

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISC. CIVIL APPLICATION NO. 10 OF 2022

ANTHONY S/O JOSEPHAT @ KABULA.....APPLICANT

VERSUS

HAMIS S/O MAGANGA..... RESPONDENT

RULING

22/8/2022 & 26/08/2022

MANYANDA, J.

Anthony Josephat @ Kabula, the applicant, is moving this court under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2018]. He is moving this court for extending the time within which to lodge a notice of appeal her purposes of appealing to the Court of Appeal of Tanzania (CAT). Also, at the same time for extension of time to apply for leave to appeal to the CAT.

The application is by way of a chamber summons supported by an affidavit sworn by one Method Raymond Gabriel Kabuguzi, learned Advocate. It is countered by a counter affidavit.

Briefly, the background of this matter is that the applicant was dissatisfied by a judgement and decree of this Court in DC Civil Appeal No. 03 of 2019



dated 21//08/2021. He lodged a notice of appeal within which to appeal to the CAT in time and subsequently successfully obtained leave to appeal to the CAT in Misc. Civil Application No. 11 of 2019 on 26/11/2021. A certificate of delay was issued by the Deputy Registrar due to delay of determination of the application for leave. Then a memorandum of appeal was lodged after obtaining all the records, the appeal was registered as Civil Appeal No. 150 of 2020 of the CAT. However, on 30/05/2022 when the appeal was called for hearing before the CAT the certificate of delay by the Deputy Registrar on exclusion of delayed days was found to be defective. Consequently, the appeal was struck out. Hence this application.

The counter affidavit avers that the counsel for the applicant has been undiligent for failing to file the application immediately after delivery of the Court of Appeal of Tanzania ruling.

At the hearing of the application Mr. Method R.G. Kabuguzi, learned Advocate, represented the applicant. On the other hand, both the Respondent and his Counsel until the time of hearing approached were absent in court without any excuse notice or reason. After satisfying that both the Respondent and his counsel were fully aware of the hearing date,

this Court ordered hearing to proceed in their absence, However, the counter affidavit will be considered accordingly.

Mr. Kabuguzi argued in support of the application arguing that the applicant was prevented to lodge the notice to the CAT due to reasons out of his control. He argued that the certificate of delay issued by the Deputy Registrar excluded fewer days as compared to the actual days of delay. He further argued that the delay occasioned after ruling of the Court of Appeal striking out the appeal on 30/05/2022 to the date of filing of this application on 20/06/2022, been 21 days of delay was due to unnatural mishappenings which caused the counsel for the applicant to delay. That Mr. Kabuguzi who represents the applicant was bereaved immediately after delivery of the ruling by the CAT. Moreover, after returning from Bukoba where he went to attend the funeral, got engaged in other matters in the CAT session held here in Kigoma. That it was due to these reasons that the 21 days of delay prevented him to file the application shortly after delivery of the CAT ruling.

In the counter affidavit, the respondent deposed that this delay of 21 days is due to negligence by the counsel for the applicant. That such a reason is inexcusable.

This Court after hearing the counsel for the applicant finds an issue to be determined is whether the application is meritorious.

In this application it has been submitted and supported by the affidavit that initially the applicant successfully lodged a notice of appeal and subsequently secured a leave to appeal to the CAT against the impugned judgement of this court. By saying so, it means, the counsel was saying that the first appeal before the CAT was well filed in time. However, it has been averred in the affidavit and submitted that the said appeal was struck out for been found to be defective hence incompetent.

It is trite law that extension of time is the discretion of the court and such discretion is exercised judiciously, that is upon good cause been shown. An applicant is required to show "*good cause*" by showing reasons for delay and reasons for extension of time.

In this matter, the reason for delay given by the applicant is that his appeal which was filed in time was struck out on technicalities. In law such a delay is the one termed as "technical delay" which courts of law treat it as "*good cause*" for extension of time. This is what the Court of Appeal said in the case of **William Shija and Another vs. Fortunatus Masha** [1997] TLR 213, it stated as follows:-

"A distinction had to be drawn between cases involving real as actual delays and those such as the present one clearly only involved technical delay in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted" (emphasis added)

A question that follows is whether the applicant acted immediately after the pronouncement of the ruling by the Court of Appeal on 30/05/2022. As explained above, the delay is of 21 days. The Counsel for the applicant has given account for delay. The Counsel for the respondent only disputes the same alleging negligence without telling what were the negligent conducts.,

In my view mere allegations of negligence without telling the conducts that amounts to negligence is not enough. The counsel for the applicant has explained the 21 days lost without filing the application for extension of time that he was bereaved and after the burial of his beloved relative he was caught up with other official activities in the Court of Appeal of Tanzania which was going on here at Kigoma.



In my view, the applicant has shown "*good cause*" for extension of time.


Consequently, I do hereby make the following orders:-

1. The application for extension of time within which to file a notice of appeal to appeal to the Court of Appeal of Tanzania is hereby granted, time is extended by 30 (thirty) days from the date of this order.
2. The application for extension of time within which to file the application for leave to appeal to the Court of Appeal of Tanzania is also granted, time is extended by 30 (thirty) days from the date of this order.
3. Each party to bear its own costs.

Order accordingly

Dated at Kigoma this 26th August, 2022.




MANYANDA,
JUDGE