

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO. 41 OF 2021

*(Originating from the Judgment of High Court of Tanzania, Dodoma
Land Appeal No.16 of 2014)*

JUMA ITEU APPLICANT

VERSUS

MARIAM BAKARI KACHURU..... RESPONDENT

RULING

Date of last order: 29/06/2022

Date of Ruling: 28/07/2022

Mambi, J.

The applicant filed an application for extension of time to file a notice of intention to appeal to the Court of Appeal out of time. In his application supported by an Affidavit the applicant filed an application (**MISC. LAND APPLICATION NO. 41 OF 2021**) for an application

for an extension of time to file Notice of appeal out of time. The application is supported by an affidavit where the applicant has stated his reasons for his delay.

During hearing, the applicant appeared unrepresented while the respondent never appeared since the matter was failed in 2021. The applicant prayed to proceed *experte* since the respondent has never appeared. Having satisfied that the respondent has never appeared to this court albeit summons duly served on him the court allowed the applicant to proceed. In his submission the applicant briefly submitted that he relies on his affidavit.

I have considerably perused the application supported by an affidavit. I have also keenly considered the application and affidavit filed by the applicant to find out whether this application has merit or not. The main issue to be determined is whether the applicant had advanced sufficient reasons for this court to consider his application for an extension of time to file his notice of appeal.

It is trite law that any party who seeks for an extension of time to file an appeal or application out of time he is required to advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law and case studies. In this regard, I wish to refer the decision of the Court of Appeal of Tanzania in ***REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)***. The court in this case observed that;

"the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted".

In other words, in determining an application for extension of time, the court has to determine if the applicant has established some material facts amounting to sufficient cause or good cause as to why the sought application is to be granted. The court needs to consider an issue as to whether the applicant in his affidavit have disclosed good cause or sufficient reasons for delay. In other words, the court needs to take into account factors such as reasons for delay and the lengthy of the delay that is to be shown that such reasons were operated for all the period of delay.

I also wish to refer the decision of the court in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 Court of Appeal of Tanzania at Dar es Salaam (Unreported) underscored that;

"Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

(a) The length of the delay

(b) The reason of the delay – whether the delay was caused or contributed by the dilatory conduct of the applicant?

*(c) Whether case such as whether there is a point of law or the **illegality** or otherwise of the decision sought to be challenged.”*

Worth also at this juncture referring the decision of the court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015** (Unreported) where it was held that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause...”

Looking at the application before this court, the applicant in his affidavit has clearly indicated that he had sufficient reasons for his delay. It is clear from the affidavit (para 4 and 5) and other records that the applicant has clearly stated the sufficient reasons based on technical delay. Indeed, the applicant had earlier filed his appeal (Civil Appeal No.50 of 2018) but it was struck out for non-compliance of the provisions of the law and later he filed a Civil Application No. 509/03/2019 which was again struck out for being incompetent. That is why he delayed in re-filing his appeal. This in my view is the sufficient reason for this court to consider his application.

Indeed, the question as to what it amounts to “sufficient cause” was underscored in **REGIONAL MANAGER TANROADS KAGERA VS**

RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007, where the court observed the following:-

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**"(emphasis supplied).*

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant".

Reference can also be made to the decision of Court of Appeal in **MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998 in** which the court at **Page 425** held that

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the applicant" will not suffer any prejudice, an extension should be granted.

I agree with the applicant that he has advanced and presented sufficient reasons for delay and the extent of such delay in his application. I also wish to refer the Law of Limitation Act. The relevant provision is section 14 (1) of the Law of Limitation Act Cap.89 [R.E. 2019] which provides as follows:-

*"14-(1) Notwithstanding the provisions of this Act, the court may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for such execution of a decree, and **an application for such extension may be made** either before or after the expiry of the period of limitation prescribed for such appeal or application (emphasis mine)".*

I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to file his notice to appeal to the Court of Appeal out of time. I

thus grant this application as prayed. This means that the applicant has to file his documents within the time prescribed by the provisions of the relevant laws.



A.J. MAMBI
JUDGE

28/07/2022

Ruling delivered in Chambers this 28th day of July, 2022 in presence of both parties.



A.J. MAMBI
JUDGE

28/07/2022

Right of appeal explained.



A.J. MAMBI
JUDGE

28/07/2022