

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. CIVIL APPLICATION NO. 10 OF 2022

(From the High Court of Tanzania at Mbeya in Civil Appeal No. 09 of 2021.
Originating from Momba District Court at Chapwa in Civil Case No. 03 of
2020)

WILLY ANGULILE MWAKABENGA.....APPLICANT

VERSUS

REBECCA NAWALE.....RESPONDENT

RULING

Date of Last Order: 06/07/2022
Date of Ruling : 17/08/2022

MONGELLA, J.

The application at hand follows the applicant's (respondent in the appeal) default in filing written submissions according to the scheduled orders by the Court in Civil Appeal No. 09 of 2021, pending in this Court. It is made under section 93 and 95 of the Civil Procedure Code, Cap 33 R.E. 2019 and supported by the affidavit of the applicant's counsel, Mr. Lucas Luvanda.

The Court ordered for written submissions whereby the applicant was to file his submission on or before 10th March 2022. The submission was never



filed on this date, hence the application at hand. In his submission and in the supporting affidavit, the applicant's counsel contends that he was at the court's vicinity on 10th March 2022 with aim of filing the submission in reply, but there was no network for obtaining the control number for payment of court fees for filing the submission. Thus he was advised by the registry officer to file the submission on 11th March 2022 after resume of the payment system network.

Mr. Luvanda argued that the delay was beyond the applicant's control thus prayed for the application to be granted. He argued that if the application is not granted, the applicant shall suffer irreparable loss. He referred the case of **Joel Silomba vs. The Republic**, Criminal Application No. 05 of 2021 (CAT at Mbeya, unreported), which listed the considerations to be taken into account in granting extension of time.

The respondent was represented by Mr. Isack Chingilile, learned advocate. He opposed the application. according to him, the applicant acted negligently and without sufficient cause failed to file his reply submission on time. He added that the applicant's supporting affidavit is based on hearsay of unknown court officers as he failed to annex the affidavit of such person to support his assertion. He said that the alleged court officer was an important person to corroborate his story that the network was off and he was advised to file the submission in reply on 11th March 2022. In support of his argument he cited the case of **John Chuwa vs. Anthony Ciza** [1992] TLR 233; **Sabena Technics Dar Limited vs. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020 (CAT at DSM, unreported);



and that of **Benedict Kimwaga vs. Principal Secretary, Ministry of Health**, Civil Application No. 31 of 2000.

Mr. Chingilile further challenged Mr. Luvanda's contention that he delayed for only one day as he filed the submission on 11th March 2022. He said that the respondent and her counsels are not aware of any such document. He added that if the document was filed, then there is no document as such because the same was rejected by the court, thus cannot be relied upon to justify the delay of one day. He was of the view that the applicant delayed for 21 days as the application at hand was filed on 01st April 2022 and the applicant has failed to account for the delayed days. Referring the case of **George Timothy Mwaikusa vs. National Microfinance Bank PLC**, Misc. Application No. 41 of 2020 (HC at DSM, Land. Div., unreported), which referred the case of **Praygod Mbaga vs. Government of Kenya, Criminal Investigation Department and Another**, Civil Reference No. 4 of 2019 (CAT at DSM, unreported), he argued that for the extension of time to be granted, sufficient cause must be shown, but the applicant has failed to show any sufficient cause.

While acknowledging the position settled in the case of **Joel Silomba** (supra) cited by Mr. Luvanda, he distinguished the same from the circumstances in the case at hand. He contended that the circumstances in the two cases are different because in the case at hand, the delay is of 21 days and there is no explanation of efforts made to avoid the delay; that the reasons for delay advanced by the appellant are unsupported and unclear as to the time spent in waiting for the network to resume; that



no point of law has been explained by the applicant; and that the grant, if any, places the respondent to a high degree of prejudice.

In conclusion, he reiterated his stance that the averments by the applicant's counsel are hearsay. He argued so referring to the verification clause in the applicant's affidavit in which the applicant stated that all the facts are true to his own knowledge. That he failed to acknowledge in the verification clause the information he purportedly obtained from the registry officer. He prayed for the application to be dismissed with costs.

Mr. Luvanda opted not to file rejoinder to the respondent's reply submission.

I have considered the application and the arguments by the learned counsels. As stated earlier, it is on record that the applicant was ordered to file his written submission on or before 10th March 2022. He defaulted whereby on 11th he purportedly filed the said submission. I agree with Mr. Chingilile that the filing of the submission, if any, on 11th March 2022, in default of the Court order is as good as no filing. It is the presiding judge, upon application by a party, that has the mandate to permit a party to file submission on another date other than the one ordered by the court. Thus, the contention by Mr. Luvanda that an unknown registry clerk told him to file the same on 11th March 2022 is absurd. The registry clerk does not enjoy such powers.

I as well agree with Mr. Chingilile, that the appellant's counsel has presented hearsay facts in his affidavit and submission. The fact that he



mentioned the registry clerk to be the one who informed him of the lack of network enabling obtaining of the control number, he ought to have obtained an affidavit of the said clerk signifying the assertion. The said information, if any, should have as well been verified in the verification clause by showing that he obtained the information averred under paragraph 5 and 6 of the affidavit from the registry clerk. In the absence of the affidavit of the registry clerk and verification of the same in his affidavit renders the assertion hearsay and unproved. See: **Sabena Technics Dar Limited vs. Michael J. Luwunzu**, (supra) and **Benedict Kimwaga vs. Principal Secretary, Ministry of Health**, (supra), both cited by Mr. Chingilile.

Further, when the matter came for necessary orders on 24th March 2022, the counsel for the respondent informed the Court that he has failed to file rejoinder submission on the scheduled date of 17th March 2022 due to the fact that he was served with the applicant's reply submission on 18th March 2022. This assertion was conceded by Mr. Luvanda. In the premises, I find it questionable that the applicant had the submission ready by 10th March 2022 or that the delay was not occasioned by his own negligence. If the same was correct, he should have been in the position to serve the same on time to the respondent to enable him file her rejoinder on the scheduled date.

The law directs for sufficient cause to be advanced by the applicant for extension of time. The reasons advanced must as well be substantiated. Though he knew that he was out of time, the applicant and his advocate filed this application on 01st April 2022. As argued by Mr. Chingilile, the



delay thereof counts to 21 days. The applicant therefore, had the obligation to account for the delayed days, but did not. The law in fact requires for each day of the delay to be accounted for. See: **Dar es Salaam City Council v. S. Group Security Co. Ltd**, Civil Application No. 234 of 2015 (CAT at DSM, unreported); **Moto Matiko Mabanga v. Ophir Energy PLC & 2 Others**, Civil Application No. 463/01 of 2017 (CAT at DSM, unreported); and that of **Finca (T) Limited & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (CAT at DSM, unreported).

In the premises, I find no sufficient cause been advanced by the applicant to warrant grant of extension sought. The application is therefore found to lack merit and is dismissed with costs.

Dated at Mbeya on this 17th day of August 2022.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 17th day of August 2022 in the presence of the applicant and his advocate, Mr. Lucas Luvanda and Mr. Ditrick Mapunda, advocate for the respondent.




L. M. MONGELLA
JUDGE