

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

**AT BUKOBA**

**MISC. CIVIL APPLICATION NO. 16 OF 2022**

*(Arising from (PC) Civil Appeal No. 46 of 2020 of the High Court of Tanzania)*

**ALLY ABBAKARY.....APPLICANT**

**VERSUS**

**FARAJI ABBAKARY.....RESPONDENT**

**RULING**

*Date of Ruling: 02.09.2022*

*A. Y. Mwenda, J.*

Under Section 11(1) of the Appellate jurisdiction Act, [Cap 141 RE 2019] together with any other enabling provisions of the law, the applicant is moving this court to grant him extension of time within which to file application for obtaining certificate on points of law for determination by the court of appeal. This application is supported by his affirmed affidavit.

Contesting the present application the respondent affirmed a counter affidavit and this contest prompted the court to summon the parties and set the matter for hearing.

On the hearing date, both parties were legally represented. On his part the applicant enjoyed the legal services by Mr. Niyikiza Seth, learned counsel, whilst

the respondent was represented by Mr. Mujuni, learned counsel. Given room to submit in support of the application, Mr. Niyikiza Seth, prayed the contents of the applicant's affidavit to be adopted to form part of his oral submissions.

The learned counsel for the applicant stated that the brief history of the matters leading to the present application is narrated in paragraphs 2, 3, 4 and 5 of the applicant's affidavit. He said the impugned decision which triggered the present application is Civil Appeal No. 46 of 2020 which quashed the lower court's decisions (i.e the Primary and District Court's). He said the said decision directed the clan council to convene and appoint a stranger to administer the estate of the party's late father's estate.

The learned counsel said the applicant was aggrieved by the said decision and he thus filed the notice of intention to appeal on 18/8/2021. He said, soon after he had filed the said notice, the applicant fell sick and remained at home from 20/8/2021 and by 27/9/2021 his condition become worse until 7/11/2021 and during all that time he was unable to prepare application for certificate on a point of law. To support this argument he made reference to Annexure AA6 to the applicant's affidavit (as the hospital card).

Mr. Seth stated further in that after he attained recovery, the applicant begun the appeal process on 20/11/2021 by finding an advocate for legal guidance and on 23/3/2022 he approached him (Mr. Seth) with a view of getting legal services in filing application for extension of time.

The learned counsel for the applicant went on submitting to the effect that the decision of the High Court (Civil Appeal No. 46 of 2020) is tainted with illegality because the process of administering the estate of the parties late father is already complete. He also added in that this court in (Civil Appeal No. 46 of 2020) did not recognize that in the proceedings of the Primary Court, the clan members were involved.

With the above submission, the learned counsel for the applicant said that the applicant managed to advance sufficient reasons and in support thereof he cited the case of NADA PANGA VS. ASHA AND TWO OTHERS, CIVIL APPLICATION NO. 312/12 OF 2020, CAT at page 7, 1<sup>st</sup> paragraph.

Responding to the submission by the learned counsel for Applicant, Mr. Mujuni, learned counsel for respondent also begun with a prayer that the respondent's counter affidavit be adopted to form part of his oral submissions.

The learned counsel begun to respond to a complaint by the learned counsel for the applicant in that the High Court's decision in Civil Appeal No, 46 of 2020 is tainted with illegality. He said there is no illegality whatsoever as the Hon. Judge, advanced reasons as to why he overruled the lower court's decisions. He said the reason advanced was that clan members were not involved in appointing the administrator of the estate as there were no minutes of the clan members' meeting. The learned counsel added in that even in the records, there is no such minutes rather the applicant submitted a report on how he distributed the estate

of their late father. For that matter he said, this court was justified to overrule the lower court's decisions.

The learned counsel for the respondent went on stating that even if this court is going to grant this application, the intended appeal is going to bounce because the notice of appeal is not served to the respondent and also that no letter which was meant to request for the records was served to the respondent, contrary to Rule 90(2) of the Court of Appeal Rules. To support this point the learned counsel cited the case of STEPHEN WASIRA VS. JOSEPH WARIOBA, TLR [1997] 205, CAT. On that basis the learned counsel said that the applicant's hands are not clean to go to the court of appeal. He cited the case MICHAEL LALA VS. TAJIRI NJADU, CIVIL APPEAL NO. 68 OF 2015, at page 5 (unreported).

With regard to reasons advanced by the applicant for consideration in extension of time, the learned counsel for the respondent said the judgment in (PC) Civil Appeal No. 46 of 2020 was delivered on 05/08/2021 and the notice of appeal was filed by the applicant on 18/8/2021. However, he said, at one point ie on (20/11/2021) the applicant filed Misc. Application No. 2 of 2022 which was struck out by this court (Hon. Ngigwana, J). He said, in the affidavit in support of the said application, the applicant said he left Muleba on 10/10/2021 travelling to Bukoba to meet with his advocate where he prepared an affidavit which he affirmed at Bukoba, and according to the learned counsel for the respondent, these dates are the same which in the present application he is alleging that he was (seriously

sick) under intensive care. The learned counsel said this fact shows the applicant is telling lies. He said the applicant had never fallen sick and the purported Doctor's report annexure AA6 to his affidavit is not a proper document to be relied on in proving facts such as the present one. He said, even if the said document was a genuine one, the contents in it shows he was attending therapy which did not prevent him from pursuing his appeal, no wonder on 10/10/2022 he travelled to Bukoba to meet with his advocate as per records in Misc. Civil Application No. 02 of 2022. For that matter. The learned counsel added, the applicant failed to advance good cause/sufficient reasons.

Lastly, the learned counsel for the respondent submitted that following the decision of this court in PC, Civil Appeal No. 46 of 2020, the clan meeting convened and appointed one Vedasto Tiba Rwakaha as administrator who filed Probate Cause No. 5 of 2021 seeking appointment and on 9/11/2021 he was confirmed by the court, only two days before the applicant alleged he recovered from his sickness. The learned counsel said on that basis, the administration of estate is complete and to support this point he cited the case of WILBROAD KANYANA VS. MICHAEL N. KAPUFI AND SIX OTHERS, MISC. LAND APPLICATION NO. 57 OF 2019 and TANZANIA BUILDING WORKS LTD VS. KAMAKA COMPANY LTD, MISC. CIVIL APPLIICATION NO. 202 OF 2020 (both unreported). The learned counsel concluded his submission with a prayer that this application lacks merits and thus should be dismissed.

In rejoinder, Mr. Niyikiza Seth stated that the submission by the counsel for the respondent was on certification on point of law and not in respect of application for extension of time. He said, even in regard to the reasons advanced by this court in PC Civil Appeal No. 46 of 2020 on ground for quashing the lower court's decision the same is submitted prematurely. With regard to submission by the learned counsel for the respondent that the impugned decision is executed, Mr. Seth said the only proof to that effect is form No. IV and an inventory which was not availed at all.

With regard to submissions by the learned counsel for the respondent that the applicant was not sick, Mr. Seth said his client was indeed sick and the doctor certified to that effect. The learned counsel for the applicant concluded his rejoinder by repeating to his previous prayer that this court be please to grant extension of time.

This court, having keenly gone through the submissions by both parties and upon a thorough perusal of the records, it asked itself as to whether or not the applicant advanced sufficient reasons for extension of time.

It is important to note that granting or refusing extension of time is the discretion of the court, discretion which has to be exercised judiciously in accordance to the principle of justice upon good cause (sufficient reasons) being shown.

Good cause (sufficient reason) was discussed in the case of ZAWADI MSEMUKWELI VS. NMB PLC CIVIL APPLICATION NO. 221/18 OF 2018. Where, the court held inter alia that;

*"Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the court's discretion under Rule 10, the court may consider factors such as the length of the delay, the reason 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 of sufficient importance such as illegality of the decision sought to be challenged and the overall importance of complying with the prescribed time line."*

On the basis of the guidance in the authority above it is now the duty of the court to assess the applicant's application to see if he advanced good cause.

In the present application. The appellant alleged two reasons. One that the decision of this court in (PC) Civil Appeal No. 46 of 2020 is tainted with illegality and two, that the applicant did not file his application in time as he fell sick and became unable to follow up the matter.

Beginning with the first part of the applicant's reasons for extension of time which is illegality, Mr. Niyikiza Seth, learned counsel for the applicant submitted that this

court in PC Civil Appeal No. 46 of 2020 erred when it directed the clan members to go and convene a fresh meeting while they had already convened and the process of division of the deceased's estate is already complete. This court have considered this argument and failed to see any illegality with the said (this courts) directives. This is so because what was ordered to be undertaken is within the mandates of the court and the ambit of the law. The records are clear that clan meeting was never convened to appoint the applicant as the administrator. I thus find no merits with this point.

On the argument by Mr. Niyikiza Seth that the applicant was prevented by sickness to from 20/8/2021 and by 27/9/2021 he was subjected to medical attention until 7/11/2021 thereby making reference to annexure AA6, I have considered this point and upon a keen look at the said Annexure two things of concern are revealed.

Firstly the said document do no state or cover the period from 20/8/2021 when the applicant allege he firstly fell sick to 27/11/2021 when he purports to start medication. In other words the applicant failed to account for each and every day of delay for a period of about 97 days i.e from 20/08/2021 – 27/11/2021. Secondly, Annexure AA6 is a letter authored by a doctor providing information regarding the applicant's medical status. It is important to note that this alone do not conclusively prove the information the applicant is attempting to reveal. The applicant was required to annex the hospital cards/chit within which the dates and the medical



problems he was facing could be stated. Even if the said document was authentic (which is not), the purported applicant's medical condition within it, is not capable of preventing him from pursuing/following up his matters.

In his submission in reply to this point, Mr. Mujuni said, in the applicant's affidavit in support to his application in Misc. Civil Application No. 02 of 2022, the applicant said on 10/10/2021 he travelled from Muleba to Bukoba to meet with his advocate, this argument was not contested by the counsel by the applicant. I have revisited the record of Misc. Civil Application No. 02 of 2022. As it was rightly submitted by Mr. Mujuni, the applicant affirmed that on 10/10/2021 he travelled from Muleba to Bukoba to meet with his affidavit. This is the same period within which the applicant alleges he was sick and incapable of filing application for certificate on the point of law. If at all the applicant was able to travel from Muleba to Bukoba on 10/10/2021, inference drawn in that he was also able to travel to deal with the present application which he is trying to rescue by seeking extension of time. From the foregoing observations, this court is of the view that the applicant failed to advance good cause for his delay.

This application is thus dismissed. Each party shall bear their own costs.

It is so ordered.



  
A.Y. Mwenda

**Judge**

02.09.2022

Ruling delivered in chamber under the seal of this court in the absence of the Applicant and in the presence of Mr. Poncian Mujuni learned counsel for the Respondent.



A.Y. Mwenda

**Judge**

02.09.2022