

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

**AT BUKOBA**

**CIVIL APPLICATION NO. 10 OF 2022**

*(Arising from the High Court of Tanzania (Bukoba District Registry) In Civil Case Appeal No. 17 of 2016 and Original Civil Case No. 1 of 2015 from Bukoba District Court)*

**GERALD MBANGA ..... 1<sup>ST</sup> APPLICANT  
ZACHARIA MUGYABUSO.....2<sup>ND</sup> APPLICANT  
HERMES BAITE.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**ALEXANDER RWECHUNGURA NGALINDA..... RESPONDENT**

**RULING**

*Date of Ruling: 19.08.2022*

*Mwenda, J.*

This is an application for extension of time to register an appeal in this court. It is intended to contest the decision of Bukoba District Court at Bukoba in Civil Case No. 01 of 2015. It is brought under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019] and Order XLIII Rule 2 of the Civil Procedure Code [Cap 33 R.E 2019].

When this application was scheduled for hearing, the applicant was represented by Mr. Brighton Mugisha, the learned counsel while the respondent hired the legal services from Mr. Mathias Rweyemamu the learned counsel.

During his submission in chief Mr. Mugisha submitted that this is an application for extension of time to file an appeal out time intended to challenge the decision in Civil Case No. 1 of 2015 delivered on 1/4/2016 before Katemana, the Resident Magistrate. He said that the reasons for delay are found in paragraph 6 of his affidavit. He thus prayed the same to be adopted to form part of his submissions.

The learned counsel submitted that following the said decision, he filed Civil Appeal No. 17 of 2017 before this court, but it was struck out for being incompetent for failure to attach the copy of judgment and decree appealed from. He said that he failed to annex the said judgment and decree because he was not availed with the said copies in time. According to him he afterwards, filed Civil Application No. 6 of 2021 seeking extension of time but the said application was marked withdrawn with the leave to refile within 14 days. Hence the present application. To support his argument, he cited the case of FORTUNATUS MOSHA VS. WILLIAM SHIJA AND ANOTHER [1997] TLR 154, and THE REGISTREED TRUSTEE OF AVANGELICAL ASSEMBLIES OF GOD (T) (E.A.G.T) VS. REV. DR. JOHN MAHAME, CIVIL APPLICATION NO. 518/4 OF 2017.

He then concluded his submissions praying this court to allow this application. He said granting extension of time will not prejudice the respondent as the applicants are craving for justice and beseeched this court to allow this matter to be heard on merits.

In reply to the submissions by the learned counsel for the applicant Mr. Rweyemamu the learned counsel for respondent informed the court that he is opposing this application. He then prayed his counter affidavit to be adopted to form part of his oral submissions.

Mr. Rweyemamu submitted that, the applicant's reasons for the delay are found under paragraph 6 of his affidavit. The learned counsel said that in the applicant's application there is no material facts to persuade this court to exercise its discretions for extension of time.

He submitted that under paragraph 6, 7 and 8 of counter affidavit they contended that the applicant failed to follow a proper procedure in filing Civil Appeal No. 17 of 2016. He submitted that the judgment of Hon. Katemana was delivered on 1/4/2016 and on 27/4/2016 it was certified and on 20/5/2016 the decree was extracted. The learned counsel further submitted that to date the applicants have not applied for a copy of judgment and decree.

He further submitted that the learned counsel for the applicant failed to annex any application letter which he used when he applied for a copy of judgment and decree. He said to date the applicant has not been availed with the said documents and for that matter even if extension of time is granted, the applicants will find themselves out of time.

The learned counsel concluded his submissions by stating that, the applicants failed to demonstrate any sufficient cause for delay and what happened was

negligence on their part. He thus prayed this application to be dismissed with costs for want of sufficient reasons.

In rejoinder Mr. Mugisha the learned counsel submitted that, he was not negligent and they are only craving for substantive justice and prayed this application to be granted.

Having gone through submissions by both parties it is clear that this court has discretionary powers to grant or refuse application for extension of time. But such discretion has to be exercised judiciously and according to rule and principle of justice. The guiding principle in granting an application for extension of time is that the applicant must demonstrate sufficient cause or reasons for the delay.

In the case of LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF TRUSTEE OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA CIVIL APPLICATION 2 OF 2010, four principles which guide the court to consider before exercising its discretion were laid down, these are

- a) The applicant must account for all the period of delay.
- b) The delay should not be inordinate.
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take and

- d) If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.

From the foregoing legal position, the issue for determination in this application is whether or not the applicants have advanced sufficient cause for the delay.

Through his submission the applicant's advocate displayed one reason for extension of time which is a technical delay. The learned counsel for the applicants stated that he filed Civil Appeal No. 17 of 2016 in time but it was struck out on 2<sup>nd</sup> July 2016 for being incompetent. Then, on 24<sup>th</sup> July 2016 he filed Civil Application No. 30 of 2019 which was marked withdrawn on 2<sup>nd</sup> March 2021 with leave to refile within 14 days. That being the case on 16<sup>th</sup> March 2021 the applicants filed Civil Application No. 6 of 2021 which was also marked withdrawn on 23<sup>rd</sup> February 2022 with the leave to refile within 14 days and on 8<sup>th</sup> March 2022 the applicants filed the present application. To him this is a technical delay hence it is sufficient reason for extension of time.

While opposing this application Mr. Mathias stated that the applicant acted negligently and failed to demonstrate good cause.

It is trite law that in application for extension of time, the applicant must demonstrate sufficient cause for the delay. In the present application the applicant was required to account for each everyday of delay from 2<sup>nd</sup> July 2016 when Civil Appeal No. 17 of 2016 was struck out to 24<sup>th</sup> July 2016 when Civil Application No.


30 of 2016 was filed. That means he was required to account for each and every day of delay for about 22 days from the date when the said ruling was delivered. This court is aware that technical delay is one of the reasons to consider in refusing or granting extension of time to file an appeal out of time. See the case of FORTUNATUS MASHA VS WILLIAM SHIJA & ANOTHER CIVIL APPLICATION NO. 6 OF 1997

But in the present application there is more than technical delay. As I have stated earlier, from 2<sup>nd</sup> July 2016 to 24<sup>th</sup> July 2016, that was a normal delay which the applicant ought to have accounted for. In other words, having so delayed the applicant filed an application for extension of time i.e. Civil Application No. 30 of 2016 which was withdrawn. The effect of withdrawing that application left his reasons for delay unattended. In the present application therefore, the applicants ought to have, on top of technical delay which happened after withdrawal to Civil Application No. 30 of 2016, to also have advanced reasons for delay from when appeal No. 17 of 2016 was struck out.

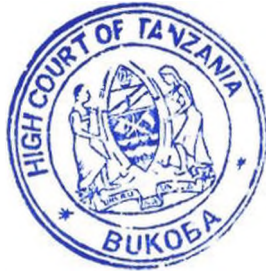
From the forgoing analysis, this court is of the view that the applicant failed to establish sufficient reason for the delay and therefore this application is hereby dismissed with costs.


Ordered accordingly.



  
A.Y. Mwenda  
**Judge**  
19.08.2022

Ruling delivered in chamber under the seal of this court in the presence of Mr. Brighton Mugisha the learned counsel for the Applicant and in the presence of the Mr. Alexander Rwechungura Ngalinda the respondent.



  
A.Y. Mwenda  
**Judge**  
19.08.2022