

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. CIVIL APPLICATION NO 18 OF 2022**

(Originating from Judgment and decree of the High Court of Tanzania at Musoma in  
Misc. Land Appeal No 147 of 2020)

**VICENT OKWARO ..... APPLICANT**

***VERSUS***

**ROBERT ATHANAS ..... RESPONDENT**

**RULING**

25<sup>th</sup> August & 19<sup>th</sup> September, 2022

**F. H. Mahimbali, J.**

This application is for extension of time to file notice of appeal to the Court of Appeal of Tanzania and also for grant of extension of time on certification that there is a point of law. The application is brought under section 11 (1) of the Appellate jurisdiction Act, Cap 141. The same is accompanied by the sworn affidavit of the applicant.

As to why filing this application, Mr. Bernard Msalaba learned advocate for the applicant submitted that the basis of this application is

traced from the decision of this court on 27/7/2021 in which aggrieved the applicant. However, for reasons out of his control, he could not process his appeal within time as per law (Notice of appeal and certificate on point of law). The main reasons for the said delay are two: Sickness (paragraphs 8,9, and 10 of the sworn affidavit) and legal anomalies (as per paragraph 11 and 12).

For these two reasons he has prayed that this application be granted for applicant to process his appeal to the Court of Appeal of Tanzania as per law (lodging notice of appeal and application and certification on point of law).

In resisting the application vigorously, Mr. Daudi Mahemba learned advocate for the respondent argued that the application has not accounted for each day of delay as per law.

He submitted that, in consideration to application No 48 of 2021 which was a similar application to this, was filed on 7/9/2021. The same was withdrawn on 15/3/2022 with leave to refile proper applications. Following the said withdraw on 15<sup>th</sup> March 2022, he challenged that this subsequent application is not spontaneously filed but on 6/6/2022. Where was the applicant on all these days (from 15/3/2022 to 6/6/2022)

to file the proper application after the said first withdraw? queried Mr. Mahemba. That he was sick, there is no evidence, submitted Mr. Mahemba. What is provided in the said medical certificate is the fact that he was just given 14 days excuse from duty. Nevertheless, assuming that it was medical certificate, the same provides that he attended the health centre on 24/8/2021 only for check-up. Therefore, what is said to be medical certificate, he criticised it as it does not qualify to be one. It is not stated who attended the said patient and that it is not clear as what was the issue.

What he gathered from the applicant's application, he has not established a good ground for the said extension of time but rather has just exhibited ignorance of the legal procedure which is not an excuse.

In his rejoinder submission, Mr. Msalaba reiterated his submission in chief and added that the sick sheet is self – explanatory.

As regards to application No. 48 of 2021, he submitted that as it was not properly filed, there was a technical delay. From the advice by the court, then this current application squarely was filed submitted Mr. Misalaba.

I have thoroughly digested the contents of the application, affidavit, counter affidavit and the submissions thereof as far as this application is concerned.

It is trite law that for an application of extension of time to stand, two reasons must be taken into board. One, accounting for each day of delay and secondly whether there are sufficient reasons (See **TanESCO Vs. Mfungo Leonard Mkajura**, Civil Appeal No. 94/2016, **Ngao Godwin Losero**, Civil Application No. 10 of 2015 at page 4).

In this case, the applicant is alleging that he was sick and later filed incompetent application. After he had withdrawn it, he filed this current application. To have confidence with the proper application, he had to find this current lawyer to serve his legal interests as the former lawyer seemed not to have applied the law properly.

On the other hand, Mr. Mahemba considers it as inordinate delay. This being a court of law, must consider whether there has been an accounting of each day of delay and that there are sufficient grounds to warrant the said extension of time.

All in all, guided by the minimal guidelines set by the Court of Appeal in the case of **Ngao Godwin Losero** (supra) making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application No. 2/2010 – unreported), the Court of Appeal reiterated the following guidelines for the grant of an application for extension of time.

- 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 he is intending to take.*
- d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.*

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from both parties through their respective counsel. For sure, I am mindful that to refuse or grant this application is the court's discretion. However, to do so there must accounted reasons for that. In **Mbogo Vs. Shah** (1968) EA the defunct Court of Appeal

for Eastern Africa held that all relevant factors must be taken into account in deciding how to exercise the discretion to extend time.

In essence I am satisfied that the applicant has established that from 20<sup>th</sup> August, 2021 to 6<sup>th</sup> September, 2021 had been sick and was excused from duty for a period of 14 days. Sickness has been considered as good ground for extension of time if dully established. Thereafter, he looked for a lawyer and filed application No. 48 of 2021 which the same was withdrawn with leave to refile. Thus, this current application gets its genesis from the withdrawn application but with leave to refile. For the interests of justice, I think this application is merited. I have exercised my discretion judiciously, and that as each case must be considered in its own merits. All relevant factors must be taken into account in deciding how to exercise the court's discretion to extend time. I think the applicant has established sickness as set back against him filing the application timely.

For the aforesaid reasons, I am convinced that the applicant has accounted good reasons of his sickness preventing him filing the said appeal timely. I thus allow the application. The applicant has to file his Notice of Appeal within a period of 30 days from today and thereafter

the said application on certification of point of law as per law. Each party shall bear his or her own costs.

DATED at MUSOMA this 19<sup>th</sup> day of September, 2022.



  
F. H. Mahimbali

**JUDGE**

**Court:** Ruling delivered this 19<sup>th</sup> day of September, 2022 in the presence of the applicant, Mr. Gidion Mugo, RMA and respondent is being absent.

  
F. H. Mahimbali

**JUDGE**