

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 43 OF 2022

(C/F High Court of Arusha Civil Appeal No.23 of 2021 and Civil case No. 4 of 2020 In the Resident Magistrate Court of Arusha)

T. G WORLD INTERNATIONAL LTD..... APPELLANT

VERSUS

CARRIER OPTIONS AFRICA (TANZANIA) L.T.DRESPONDENT

RULLING

28 & 30 /9/2022

KOMBA, J

The appellant being aggrieved by the decision of Residents' Magistrates' court of Arusha in Civil Case No. 4 of 2020 which was delivered on 7th May 2021 opted for appeal to the High Court, Arusha District Registry unsuccessfully and found himself out of time hence this application that;

- 1. That this honorable court be pleased to extend time to file Memorandum of Appeal out of time against the decision of civil Case No. 4 of 2020 delivered on 7th May. 2021 before Honorable Nguvava RM.*



2. Costs abide by event.

This application come under Section 14 of Laws of Limitation Act [Cap 89 R.E 2019] and Section 95 of the Civil Procedure Code [Cap 33 R.E 2019].

The application was supported by sworn affidavit by Deogracious Temba to wit;

1.
2.
3. *That, Applicant in this Application was the Defendant on Civil Case No. 4 of 2020 and the Respondent herein was the Plaintiff. Judgment on the said civil case was delivered before Honourable Nguvava, RM on 7th May, 2021. A copy of the said decision is attached hereto and marked "TG-1".*
4. *That, Applicant was aggrieved by the decision of Resident Magistrate Court and lodged a Petition of Appeal before the High Court against the decision of the Resident Magistrate Court Civil Appeal No. 23 of 2021. A copy of petition of appeal is attached hereto and marked "TG-2".*
5. *That, on 4th April, 2022 this Honourable Court (Hon. Robert, J) struck out Applicant appeal due to technicalities. A copy of the decision is attached hereto and marked "TG-3".*
6. *That, reasons for delaying in filing an appeal on time was caused by ongoing proceedings of Civil Appeal No. 23 of 2021 which was struck out on 4th April, 2022.*

NK

7. *That the Respondent's right will not in any way be prejudiced if this application is allowed.*
8. *That, the intended appeal has overwhelming chances of success as per the intended ground of appeal because there was illegality on records that needs to be addressed.*

It is on the above grounds the applicant prays this court to grant him leave to appeal out of time.

In the counter affidavit filed by the respondent Joseph Ndungu Mathenge he challenged the applicant's application and that he was put under strict proof his allegation that respondent's rights will not in any way be prejudice if this application is allowed. He confirmed state that his rights will be prejudice if application granted.

When the application was called for hearing on 21 September, 2022 Applicant was represented by Advocate Mariam Saad while respondent enjoyed the service of Mr. Zuberi Ngawa, Advocate. Due to some certain circumstances, application was ordered to be entertained by written submission the last order was rejoinder to be filled on 28 September, 2022 both the applicant and respondent agree the same and complied.

NK

Applicant while adopting the plier filled affidavit explain his awareness of 60 days rule. He was of explains that the Applicant did file an appeal within the required time, civil appeal No. 23 of 2021 before this honorable court on 21st June 2021. Due to technicalities trial judge struck of the same on 4th April 2022. Since civil appeal No. 23 of 2021 was in progress they could not file an appeal before 4th April 2022 when it was removed from the court and refer this court to the case of **Fortunatus Masha v. William Shija and Another** [1997] T.L.R 154 where the court held and I quote: -

" A distinction had to be drawn between cases involving real or actual delays and those such as the present one which only involved technical delays in the sense that the original appeal was lodged in time but had been found incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court struck out the first appeal. In these circumstances, an extension of time ought to be granted".

From this quotation applicant is of the view that the delay in filing the memorandum of appeal on time was technical and not an actual delay thus contends this application be granted.

Further the applicant refers the case of **John Donald @ Fabian and 2 others v. The Republic** Misc. Criminal application No. 59 of 2020 the court cited the case of **Bushir Hassan v. Latifa Lukio Mashayo**, Civil

Application No. 192/20 of 2016 (unreported) showing being aware of the principle of granting an extension of time: -

"A delay of even a single day has to be accounted for, otherwise they will be no point of having rules prescribing the period within which a certain step has to be taken."

Counting from the deadline of filing an appeal which is 21st June 2021 to 5th April 2022 when this application was filed, 288 days have passed. The proceeding of the High Court determines the preliminary objection raised by Respondent the court took 287 days until the date of ruling which is 4th April 2022 and immediately on 5th April 2022 the Applicant filed this Application for extension of time. This is how she count each of day of delay.

Ms. Mariam finally indicated that there is illegality on face of record which need to be rectified that the trial court, relied on electronic evidence which was wrongly and unprocedural admitted hence refer this court to the case of **Principal Secretary Ministry of Defence and National Service V. Devram Valambhia** [1992] T.L.R 185.

In challenging the application, Mr. Zuberi fully adopt counter affidavit and adduce that Civil Appeal No. 23 of 2021 was preferred under wrong tittle of "***petition of appeal***" instead of "***memorandum of appeal***" *contrary to*

NK

the law, which amount to ignorance of the law by the Appellant in attending mandatory rules of procedures. He refers this court to the case of **Hamimu Hamisi Totoro & 2 Others Vs. Republic**, Criminal Application No. 121/07 of 2018 quoting the decision in the case of **Hadija Adam v. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported) at page 5, where the Court stated as follows:

"As regard the applicant's ignorance of law and its attendant rules of procedure, I wish to briefly observe that such ignorance has never been accepted as a sufficient reason (see for instance, Charles Machota Salugi v. Republic, Criminal Application No. 3 of 2011 (unreported)).

On the issue of illegality, he submitted that, the allegation of illegality must be reflected and elaborated in the affidavit and that mere mentioning in the affidavit that there is illegality without elaborating such extent of the same is not enough and refer this court the case of **Principal Secretary Ministry of Defence and National Service (Supra)**. Lastly, he indicated that the applicant has not demonstrated sufficiently that good cause exists to enable the Court to exercise its jurisdiction to grant extension of time.

The issue to be determined by this court is whether the applicant has paraded good cause warranting extension of time.

In **Tanga Cement Company Limited vs Jumanne D Massanga and Amos A. Mwalwanda, Civil application No. 6 of 2001**, Nsekela, JA. It was said;

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

The records as evidenced by annexure TG-3 in the applicant's affidavit shows that the Ruling of the High Court Civil Appeal No. 23 was delivered on 4th April, 2022. This proves that there was a civil case which was going on. The following day, that is 5th April, 2022 the applicant files this application. Applicant acted promptly.

Joining hand with applicant, existence of Civil Appeal No. 23 of 2022 hinder applicant from filling memorandum of appeal within prescribed time, and that they accounted for each day of delay.

NK

Bearing in mind principle rooted in the case of **Alliance One Tobacco Tanzania Limited and Another Vs. Mwajuma Hamisi** Misc. Application No. 803 of 2018 (unreported) that;

*'Courts should uphold the overriding objective principle and disregard minor irregularities and unnecessary technicalities in order to achieve **substantive justice** (emphasize supplied).*

In the premises, for want of substantive justice application is hereby granted.
The applicant should lodge the intended appeal within fourteen (14) days, from the date of delivery of this ruling.

Costs to be considered in the intended appeal.

Right of appeal explained.


M. L. KOMBA

JUDGE

30/09/2022

Ruling delivered this 30th day of September 2022 in chamber in the presence of both parties.




M. L. KOMBA

JUDGE

30/09/2022