

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM.

MISC. CIVIL APPLICATION NO.363 OF 2020

(Originating from Civil Application No.33 of 2018 at High Court of Tanzania at Dar es Salaam)

SELEMAN SEIF APPLICANT

VERSUS

HAFIDHI SAID RESPONDENT

Last Order:30/05/2022
Ruling date:10/08/2022

RULING

MANGO, J.

This is an application for enlargement of time within which to permit the Applicant to lodge a notice of appeal against the decision of the High Court dated the 27th April, 2020 (Masabo, J.) in Misc.Civil Application No. 33 of 2018. The application is made under section 11(1) of the Appellate Jurisdiction Act [Cap 141 RE 2019]. The same is supported by an affidavit duly affirmed by the Applicant. The application has been resisted by the Respondent via counter affidavit and oral submission during hearing.

The Applicant unsuccessfully applied for extension of time to file notice of

appeal against the decision of this Court in Civil Case No. 39 of 2001. The Application which was registered as Misc. Civil Application No. 33 of 2018 was determined on 27th April 2020. On 23rd July 2020 the Applicant approached this Court for enlargement of time to file notice of appeal against the decision of this Court in Misc. Civil Application No. 33 of 2018.

On 30th May 2022 when this application was called for hearing the Applicant was represented by Advocate Mary Lamwai while the Respondent was represented by advocate Gordon Nashon.

In her submission in support of the application, learned counsel for the Applicant adopted the contents of the affidavit filed by the Applicant to form part of her submission. According to the Applicant's affidavit, the reason that contributed to his delay to file the intended notice of appeal is sickness.

The learned counsel explained how the Applicants sickness contributed to his delay to file the intended appeal. She submitted that, when the ruling was delivered, the Applicant fainted/ collapsed. After the incident, the Applicant had to go through a lengthy medical examination through which it was discovered that he was suffering from typhoid. She referred the Court to annexure SS1 to the affidavit which is medical chit

establishing medical examinations which the Applicant went through.

She submitted further that the Applicant was incapable of seeking legal advice during the entire period of his sickness. The affidavit establishes that the Applicant's health improved by 18th June 2020. Immediately thereafter, the Applicant filed the application at hand. The learned Counsel prayed the Court to do away with technicalities and grant the application since the Applicant has shown diligence in pursuing the intended appeal.

In his reply submission, learned counsel for the Respondent registered his views that the application is devoid of merits. He substantiated his views with the failure of the Applicant to account for the entire period of delay. He pointed out the fact that, although it is alleged that the Applicant collapsed immediately after receiving the ruling in Misc. Civil Application No. 33 of 2018, the Applicant failed to mention the date that he fell unconscious.

He submitted further that, the medical chit produced by the Applicant indicates that the Applicant received medical services on 17th May 2020. The Applicant did not account for his delay from 27th April 2020 to 17th May 2020. He also highlighted the Applicant's failure to account for his delay from 18th June 2020 when he allegedly recovered, to 23rd July 2020. Citing the case

of **Vodacom Foundation Versus Commissioner General (TRA)** Civil Application No. 107/20 of 2017, Court of Appeal of Tanzania at Dar es salaam, he argued that the Applicant is duty bound to account for each day of delay with a good reason. He is of the view that, the Applicant failed to account for the entire period of delay thus, the application deserves to be dismissed for being unmeritorious.

In her rejoinder, learned advocate for the Applicant reiterated her submission in chief. She also distinguished circumstances in the case cited by the Respondent's counsel from circumstances in this Application and prayed the Court to determine each case on its own circumstances.

I have considered rival submissions by parties to this Application. It is well established that, in Applications for extension of time, the Applicant is required to account for the entire period of delay with a good reason. In the application at hand the Applicant has advanced sickness as a reason that prevented the Applicant to pursue his intended appeal on time. Ordinarily sickness is among good ground that may move the Court to grant extension of time. However, such sickness should be proved.

The Applicant in this application managed to prove his sickness by a laboratory request form and the Respondent did not dispute the Applicant's

sickness. However, the medical chit establishes that, the Applicant was sick from 17th May 2020 which is almost 21 days from the date the ruling sought to be challenged was delivered. The laboratory request form indicates that the Applicant lost his appetite thus, some tests were conducted to find out what caused the Applicant to lose his appetite.

According to the 4th paragraph of the Applicant's affidavit, the Applicant recovered from sickness on 18th June 2020. The Application at hand was filed on 23rd July 2020 more than 30 days after the Applicant's recovery from his sickness. The Applicant did not account for such delay with any good reason. As correctly submitted by the Applicant's counsel that, the Court should determine each case on its own circumstances, circumstances in this Application establishes that sickness of the Applicant is not a sufficient ground to warrant the Court grant extension of time. I hold so because the Applicant's sickness did not cover the entire period of delay. It is not clearly established when the Applicant fell sick and it is not clear what prevented the Applicant to act immediately after 18th June 2020 when he recovered from the alleged sickness.

For that reason, I find the Applicant to have failed to account for the delay with a sufficient cause and I hereby dismiss the Application. Given

circumstances in this Application, I do not award costs.

Dated at Dar es salaam this 10th August 2022


Z. D. MANGO
JUDGE



ORIGINAL