

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC.CIVIL APPLICATION NO. 474 OF 2021

UMMY YAKOBO..... APPLICANT

VERSUS

MWANAAMINA SHABANI..... RESPONDENT

RULING

Date of last order: 25/08/2022

Date of Ruling: 30/09/2022

E.E.KAKOLAKI, J.

Before me is an application for extension of time within which to file an appeal out of time. The application is preferred under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019](the LLA), Section 25(1)(b) of the Magistrate's court Act, [Cap 11 R.E 2019](the MCA) and section 95 of the Civil Procedure Code, [Cap 33 R.E 2019](the CPC). It is supported by the applicant's own affidavit narrating what transpired to her between 8th of June, 2021, when the judgment of the trial Court was pronounced in favour of the respondent in Civil Case No.54 of 2018, before Hon. K.T. Mushi, RM, to the date of filing the present application on 13/09/2021.

The applicant in his affidavit has deponed three grounds for consideration by this Court for the grant of extension of time. These are delay in issue of copy of the decision sought to be challenged, absence of the applicant in Dar es salaam due to sickness of her mother at Tanga and illegality of the decision sought to be challenged.

The application however, encountered strenuous resistance from the respondent who filed the counter affidavit to that effect dully affirmed by the respondent MwanaAmina Shabani, challenging most of the averments in the applicant's affidavit. In para 8 thereof, the deponent avers that there is no sufficient reason for the grant extension rather the applicant is using this application as a delay tactics to prevent the respondent from enjoying the fruit of her decree.

At the time of hearing of the application both applicant and respondent appeared represented by Mr. Jonas Kilimba and Ms. Dorothea Mkwizu, learned advocates respectively and the matter proceeded by way of written submissions in which, I had an ample time to peruse and understand.

The law is settled that, in granting an application for extension of time the applicant has to show good cause. As to what amounts to good cause there

is no fast and hard rule as it depends on the materials put before the Court by the applicant justifying his delay or any other grounds for the Court to exercise its discretion. See the cases of **Regional Manager, Tanroads Kagera Vs. Ruaha concrete Company Ltd**, Civil Application No 96 of 2007 and **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (all CAT-unreported).

Before embarking into determination of the issue whether or not the applicant has established sufficient cause warranting the Court to exercise its discretion, this Court deemed it fit to deliberate on the provision of section 25(1)(b) of the MCA, cited by the applicant as enabling provision to move the Court to grant her extension of time. It is noted that, the said provision is under Part III item (c) of the MCA which provides for Appellate and Revisional Jurisdiction of the High Court in relation to matters originating in Primary Court, in which section 25(1)(b) of MCA, provides that time for filing the appeal may be extended either before or after expiry of thirty (30) days from the date of the decision. The section therefore covers appeals to this Court originating from the District Court when exercising its appellate jurisdiction on the decision from the Primary Court and not where exercising its original jurisdiction. It follows therefore that, the said provision is

inapplicable to the circumstances of this matter as the sought to be impugned decision is originating from the decision of the District Court of Temeke when exercising its original jurisdiction in Civil Case No.54 of 2018.

The above stated notwithstanding, I find the application is competent as the Court is properly moved under section 14(1) of LLA, since in the awake of the principle of overriding objectives as provided under section 3A of the CPC, whose object is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes, wrong citation of the enabling provision is not fatal in as long as the Court has jurisdiction to entertain the matter. It is averred in the applicant's affidavit and submitted on by Mr. Kilimba in his submission in support of the application that, soon after delivery of the judgment on 08/06/2021 the applicant on 23/06/2021 applied for certified copy of the judgment which could not be supplied to her timely as it was available for collection 27/07/2021. At that time it is averred the applicant had travelled to Tanga since 22/07/2021 to nurse her sick mother until 19/08/2021 and was able to collect the said copy of judgment on 23/08/2021 before she instructed her advocate on 30/08/2021 to prepare this application, the application which was filed on 14/09/2021. It is Mr. Kilimba's submission that, the time spent by the applicant awaiting for supply

of the copy of judgment should be excluded as well as the time when she was nursing her sick mother. Several decisions were relied on to support that proposition. Further to that he argued, there is illegality on the decision sought to be challenged as the trial Court awarded damages without proof and relied also on electronic evidence which was in contravention of the law, hence good ground for extension of time. He cited cases on illegality of the decision sought to be challenged as good ground for extension of time even without accounting for the delayed days.

As alluded to above the respondent filed counter affidavit opposing the application. In response to the applicant's submission, Ms. Mkwizu argued that, the affidavit by the applicant is barren of good cause warranting this Court exercise its discretion whether to grant the application or not. Citing to the Court several authorities in support of her stance she argued that, though sickness is good ground for extension of time, there is no evidence proving that the applicant travelled to Tanga to nurse her sick mother. She contended, the applicant is employing delaying tactics as if true she travelled to Tanga, she would have directed her advocate to timely collect the copy of judgment and proceed to file the appeal but to the contrary laid at her back awaiting for extension of time. As to the illegality of the decision she

argued the same must be apparent on face of record which is not the case in this matter as the same does not exist at all, leave alone the fact that it can be traced through a long argument. She therefore invited the Court to find the application is without merit and dismiss it with costs. In rejoinder submission Mr. Kilimba almost reiterated his submission is chief while maintaining his prayers.

Upon close follow up of the fighting submissions by the parties and perusal of affidavit and counter affidavit, I have noted that both pleaded and submitted while acting on wrong assumption that, the appeal sought to be pursued by the applicant upon extension of time ought to be filed within thirty (30) days of the decision of the trial court. It is uncontroverted fact that, the case before the trial court proceeded under the CPC which does not provide for the time limitation within which the applicant could file her appeal. In absence of such provision, time limitation is governed by item 1 of Part II to the schedule of the LLA, which provides for ninety (90) days within which to appeal against the decision proceeded under the CPC.

In the present there is no dispute the judgment sought to be impugned was delivered on 08/07/2021 and its copy was available for collection on 27/08/2021 as deposed in paragraph 5(c) of the affidavit and rightly

submitted by Mr. Kilimba. The law under section 19(2) of LLA excludes from computation, *the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed.* The said provision of section 19(2) reads:

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

In this Court the copy of judgment of the trial court was available for collection on 27/07/2021. Now counting ninety (90) days from that date the applicant was supposed to file her appeal by 26/10/2021. It is however noted that, this application was filed in Court on 14/09/2021, exactly 43 days prior to expiry of 90 days, which was well within the time limitation for filing the said appeal. Section 14(1) of the law of LLA, stipulates that, an application for extension of time may be made *either before or after the expiry of the period of limitation prescribed for such appeal or application*, in which in this case the applicant though acting out of ignorance of the time limitation for

filing appeals preferred this application before expiry of time. The said section 14(1) of LLA reads:

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

It is common ground that, each case is decided on its own merits. In this case as alluded to above, though the applicant acted out of ignorance of the law governing appeals from District Court when exercising original jurisdiction, the application was filed before expiry of 90 days. For that matter, I hold there was no need for the applicant to account for what she thought were the delayed days. For the interest of justice and afore stated reasons, I find the application is meritorious and proceed grant the same.

Time is therefore extended to the applicant for twenty one (21) days within which to file the appeal to this Court from the decision of the District Court of Temeke in Civil Case No. 54 of 2018 dated on 8th June, 2021.

Costs to be in the course.

It is so ordered.

Dated at Dar es salaam this 30th day of September, 2022.



E. E. KAKOLAKI

JUDGE

30/09/2022.

The judgment has been delivered at Dar es Salaam today 30th day of September, 2022 in the presence of Ms. Loveness Denis advocate Mr. Twaha Taslima, advocate for the appellant, Ms. Doroth Mkwizu, advocate for the respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

30/09/2022.

