

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CIVIL APPLICATION NO. 33 OF 2021

(Arising from Civil Case No. 06 Judgment and Decree No. 06/2019)

EQUITY FOR TANZANIA LIMITED.....APPLICANT

VERSUS

NGWESSA NGHWANI.....RESPONDENT

RULING

27th Sept & 4th Oct, 2022

Nongwa, J.

This ruling emanates from an application for extension of time within which to file an appeal before this court by Equity for Tanzania Limited, herein after to be referred as the applicant. Being unsatisfied by the judgment in civil case no. 6 of 2019, Bariadi District Court and being out of time within which the law allows one to file an appeal, the applicant filed application against Ngwessa Nghwani, herein after to be referred to as the respondent. The application has and has been brought under section 93 and 95 of the Civil Procedure Code Cap 33 R.E 2019 and section 14 (1) of the Law of Limitation Act Cap 89 R.E 2019. The applicant prays for orders that;

- i. This honorable Court be pleased to extend time within which the applicant may file an appeal out of time against the judgment and decree of Bariadi District Court dated 30th June 2021.
- ii. Any other relief (s) deemed fit and just to be granted.

The application has been supported by an affidavit of Advocate George P. Pesha, and has been heard by way of written submission, both parties have been represented, the applicant has been enjoying the services of the learned counsel Mr. George Pesha while the respondent under the good hands of the learned counsel Mr. Martin Sabini.

In summary the applicant submitted that, the law of Limitation Act Cap 89 R.E under section 14 (1) provides that a party may make an application for extension of time either before or after the expiry of the period of limitation prescribed under the law of limitation.

That after the delivery of the Civil case no. 06/2019 on 30th day of June 2021 by the District Court of Bariadi. The applicant on 28th day of July 2021 filled online an appeal within time being 28 days of 90 days prescribed under the law of limitation Act Cap R.E 2019. That, following the submission of the said appeal, waited for the said appeal to be admitted to which was admitted silently and online JSDS Porto did not ever show or return notification of the said admission on admission section contrary to regulation 33 (1) of Judicature Application of Laws (Electronic Filling) Rules, 2018.

That, given the circumstance and the shortcomings of the online filling system the applicant was in state of quagmire and failed to understand if the same was admitted and issued control number. Thus, on 24th August 2011 which was 55 days from the date of filing the appeal, the applicants advocate personality visited High Court of Shinyanga registry to inquire the status of appeal where he was informed that the said appeal was admitted and issued control number 991400478387 and that it had already expired.

That, taking into account the shortcomings of the online system on 27th August, 2021 which is 57 days out of 90 days required to file an appeal from matters originating for the district Court, the applicant filed an application for extension of time before the lapse of 90 days as permitted by the wordings of section 14 the law of Limitation Act, that is 33 days before the expiration of 90 days limitation to file an appeal so that he can be extended time to file the appeal without being engulfed with the mischiefs of the online filling system.

Citing the case of **Indo-African Estate Ltd vs District Commissioner for Lindi and three others Civil Application No. 12/07 of 2022** (unreported), and **Valerie MCGovern vs Salim Fakhrudin, Civil Application No.11 of 2015**, CAT at Tanga, the learned counsel stated that where there is ample evidence that the applicant had acted diligently within time, no reason to penalize the applicant for mistake that was beyond his control. That, it is trite law that no particular reasons have been set out as standard sufficient reasons. What constitutes a good cause cannot therefore be laid down by hard and fast rules. The term good cause is relative one and dependent upon the circumstances of each individual case.

Mr. George Pesha, explained further that the applicant was not negligent but diligently followed up the matter, and filled an extension of time timely to avoid the consequences of filing an appeal out of time and the mischiefs of the online filling system. He prayed for the application of extension of time be granted so that the applicant can file his appeal and exercise his appellate rights.

In his reply, the learned counsel, Mr. Martin Sabini submitted that, the applicant and his advocate deliberately acted in a negligent way for their failure to make an early follow up in respect of timely admission of the appeal after observing that, there is a failure of the online filing system if any. Mr Martin Sabini submitted further that, his appeal was admitted as usual and not in a silent way, rather the problem was on the applicant's side for his failure to have a deep monitoring of their appeal from this Honorable Court. That all together the applicant and his advocate remained silent for almost 26 days until on 24th August, 2021 when they took some measures to see the status of the appeal at this Court basing on the length of time up to when the applicant made a physical follow up to this Court, it is of no doubt that, the applicant lost interest of the case.

Mr. Martin Sabini insisted that, the applicant was not serious at all because the appeal was admitted accordingly and control number was also issued but the applicant remained silent until it had expired, he did not take any effort at earliest stage to see what was the problem if any, rather he remained silent until 24th August, 2021 when he approached the court premises for an inquiry. Mr. Martin Sabini did not see any good cause for his application to be allowed, and therefore prayed that the application be dismissed.

After carefully considering the rival arguments stated by the counsel for both sides and before deciding whether this application should fail or succeed, I wish to state quite clearly that, it is a common law that an order for extension of time may be granted by the Court in the exercise of its discretionary powers. I wish to follow the reasoning of the Court of Appeal in the case of **Yusufu Same and Another vs. Hadija Yusufu**,

Civil Appeal No. 1 of 2002 CAT at Dar es salaam (<http://tanzlii.org>),
the court stated that;

'It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judiciously, and the overriding consideration is that there must be sufficient cause for so doing. 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 the delay, lack of diligence on the part of the applicant, does not amount to sufficient cause'.

Moreover, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case under consideration and the ground might not be similar. There is no precise definition of what amounts to reasonable cause, however, I am in consensus with what was stated in the case of **Felix Tumbo Kisima vs. Ireland Another (1997) TLR 57** where the court observed that;

'It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons or cause which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps.'

From the application before me, the main reasons for prayer for extension of time to file an appeal are found under paragraph four to ten

of the applicant's affidavit and those reasons being that, on 28th day of July 2021 the appeal was filled online within time being 28 days of 90 days prescribed under the law of limitation Act, waited for the said appeal to be admitted to which was admitted silently and online JSDS Porto did not ever show or return notification of the said admission on admission section contrary to regulation 33 (1) of Judicature Application of Laws (Electronic Filling) Rules, 2018.

I agree that, given the circumstance and the shortcoming of the online filling system the applicant was in state of not knowing the status of his appeal and failed to understand if the same was admitted and issued control number. Thus, on 24th August 2011 which was 55 days from the date of filing the appeal the applicant's advocate personality visited High Court of Shinyanga registry to inquire the status of appeal where he was informed the said appeal was admitted and issued control number 991400478387 and had already expired.

That, taking into the shortcoming of the online system 27th August, 2021 which is 57 days out of 90 days required to file an appeal from matters originating from the district Court, the applicant filed an application for extension of time before the lapse of 90 days as permitted by the wordings of section 14 the law of Limitation Act, that is 33 days before the expiration of 90 days limitation to file an appeal so that he can be extended time to file the appeal without being submerged with the mischiefs of the online filling system.

The counsel for the Respondent has argued that the applicant and his advocate were not serious at all because the appeal was admitted accordingly and control number was also issued but the applicant

remained silent until it had expired without taking any effort to see what was the problem rather remained silent until 24th August, 2021 when he approached the court premises for an inquiry. The counsel however did not counter that fact that the JSDS porto at the applicant's side did not show the status of the appeal filed.

As stated in the case of **Indo-African Estate Ltd** (supra) cited by the applicant, the reason for being out of time was beyond his control because it involves electronic systems, proof of the first attempt to file an appeal has been attached in the affidavit, that is a print out of JSDS online submission of the memorandum of appeal showing to have been submitted on 28th July 2021. I find no reason to penalize the applicant for mistake that was beyond his control. I consider it to be a sufficient cause for this court to grant the applicant with the prayers sort.

The applicant in this application has found shelter under the Law of Limitation Act, Cap 89 in particular section 14 (1) which provides that;

'S. 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.'


For clarity subsection (2) of section 14 the same Act provides that for the purposes of section 14, the court means the court having jurisdiction to entertain the appeal or, as the case may be, the application. This court

finds merit in the applicant's application for extension of time within which to file an appeal.

The application therefore succeeds the time is hereby extended and the prospective appellant to file an appeal within fourteen days (14) from the date of this ruling. Each party to bear own costs.

It is so ordered.




V.M. Nongwa
Judge
4/10/2022