

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPLICATION NO.24 OF 2022

(Arising from Land Appeal No. 93 of 2016 of the High court of
Tanzania Mwanza originating from civil case no 63/2015 in Nyamagana
District court)

REGINALD M. MORENJE-----APPLICANT

VERSUS

WARDA MOHAMED ----- RESPONDENT

RULING

Last order: 28.09.2022

Ruling date: 05.10.2022

R. B. MASSAM, J.

By a chamber summons made under section 14(1) of Law of Limitation Act Cap. 89 RE: 2019 and section 11(1) of the Appellate Jurisdiction Act, Cap. 141 RE: 2019, the applicant applies for extension of time to file a Notice of Appeal to the Court of Appeal. The applicant's application is supported by the affidavit deposed by Reginald M. Morenje the same is opposed by the counter affidavit affirmed by Warda Mohamed the respondent.



The application was argued before me orally whereas the applicant appeared in person, unrepresented, while the respondent was represented by the learned advocate Mugabe Joseph.

In his brief submissions, the applicant submitted that he prays to this court to grant his prayer as prayed. In his affidavit, he said that he was a defendant to Civil Case No. 63/2015 which was before Chiwego Rm at Nyamagana District Court. He was aggrieved by the decision of the District Court so he appealed to this court before RUMANYIKA, J. where he lost the case and appeal to the Court of Appeal and his case was struck out because he had no leave to appeal to the Court of Appeal. His advocate was late to help him to apply for leave to appeal on time thus why he came to pray for an extension of time. He said that he was not negligent but he was struggling to get his justice for a long time by filing different cases in court but he always lost.

Responding to the application, Mr. Mugabe Joseph submitted that he is objecting the applicant's prayer because he did not account for days from the order of the Court of Appeal dated on 25/2/2022 to 23/3/2022 which is 28 days. He added by saying that the applicant in para 8 of his affidavit told the court that he is praying to be given leave as he has a chance to succeed. He submitted that he opposes the applicant to be granted leave to file a notice of appeal out of time because the applicant



did not tell the court which chances he has in order for the court to grant him that leave. For that failure, therefore, he pray to this court not to grant the said application.

I have given careful consideration to the arguments for and against the application herein advanced by the learned advocate for the applicant and the respondent respectively, the central issue for determination is ***whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant.***

As it was cited in the chamber summons the applicant moved this court through section 11(1) of the Appellate Jurisdiction Act, Cap. 141 RE: 2019. This is the provision of law that gives this court power to grant leave to appeal out of time if the time for making the application has already expired.

However, the appeal from the High Court to the Court of Appeal is governed by Rule 83 of the Court of Appeal Rules, 2019. While Rule 83(1) provides the manner of appeal, Rule 83(2) gives the time limit within which a person may file notice of appeal. The Rule provides that:

'83(2) Every notice shall subject to the provisions of Rule 91 and 93 be so lodged within thirty days of the date of the decision against which it is desired to appeal.'

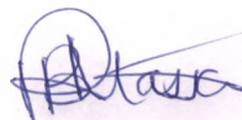


The above provision requires the applicant to file this application within thirty days from the date of the decision. In the case at hand, the applicant delayed to file a notice of appeal within time which compels him to file the application to request this court to grant an extension of time to file a notice of appeal out of time.

It is a trite law that, this court has discretionary powers to grant an application for extension of time; but that discretion is judicial which has to be exercised according to the rules of reason and justice. In **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's and Christian Association of Tanzania**, Civil Appeal No. 2 of 2010 (unreported) the court decided that:

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

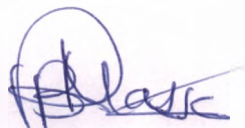


d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged'.

The position of the law is settled that whenever there is an application for extension of time the applicant will succeed upon showing good cause to justify why his application should be granted. It has to be noted that the good cause to warrant the extension of time is not provided for as it depends on the circumstance of each and every case.

As it was highlighted in the case of **Jacob Shija vs. M/S Regent Food & Drinks Limited and The Mwanza City Council**, Civil Application No 440/08 of 2017, CAT at Mwanza (unreported) among other things the court stated that:

What amount to good cause cannot be laid by any hard and fast rule but are dependent upon the facts obtaining in each particular case. That is each case will be decided on its own merits, of course taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether very day of delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant."



In the application at hand, I have gone through the applicant's submissions and indeed revisited the applicant's affidavit specifically on paragraph 7 where it is stated that the applicant failed to file a notice of appeal on time because he took a lot of time pursuing appeal No. 141 of 2019 which later on was struck out for being incompetent so he prays to this court not to see him as negligent.

Again, this court had time to calculate the time which the applicant delayed to file this application in the sense that the decision from the Court of Appeal was delivered on 25/02/2022 and this case was filed to this court on 23.03.2022 it was 28 days.

In determination as to whether the applicant managed to move this court, the law is settled and clear that the applicant must bring to the court sufficient reasons to account for each day of delay which means that the applicant is required to account for each day of delay from 25.02.2022 when his statutory time ended to 23.03.2022 when he filed this application. This principle is reflected in the case of **Dar es Salaam City Council vs. Group Security CO. LTD**, Civil Application No. 234 of 2015 CAT at Dar es Salaam, where it was stated that: -

"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for every day of the delay."



In the present application, the applicant was required to account for each day of his delay, as seen above applicant delayed for 28 days [one month]it is expected that the applicant could have accounted for each day of delay.

The principle of accounting each day of delay has been also emphasized in the case of **Juma Shomari vs Kabwere Mambo**, Civil Application No. 330/17 of 2020 CAT at Dar es Salaam, where it was stated that: -

"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."

This position has been pronounced in various decisions of the Court of Appeal, few of which are in the cases of; **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 (All unreported)

Guided by the above decisions, it is my finding that the applicant did not account for each day of delay for the following reasons; that applicant did not tell this court if he has other reason for the delay other than pursuing his case for a long time. Also, he failed to tell this court how he



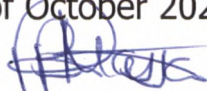
will suffer if his application will not be granted, and again the applicant in his affidavit told this court that he has a good chance to succeed but he failed to tell this court the said reasons, so this court supports the respondent submitted that applicant failed to show good cause for his delay

In the final analysis, I find that the applicant has failed to account for each day of delay and show a good cause upon which this Court can exercise its discretion to grant an extension of time to file a notice of appeal to the Court of Appeal out of time. Consequently, the application is thus devoid of merit and it is hereby dismissed. No order as to costs.


It is so ordered.

Dated at Mwanza this 5th day of October 2022.




R.B. MASSAM
JUDGE
05/10/2022

COURT: Judgment delivered on the 05th day of October 2022 in the absence of both parties.


R.B. MASSAM
JUDGE
05/10/2022