

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA**

AT ARUSHA

CIVIL APPLICATION NO. 79 OF 2022

*(Arising from Civil Appeal No. 13 of 2020 originating from Matrimonial Appeal No 24 of 2020
of the District Court of Arumeru at Arumeru from Matrimonial Cause No. 8 of 2020 of
Enaboishu Primary Court of Arumeru District)*

JARED ONESMO..... APPLICANT

VERSUS

JANETH JOHN..... RESPONDENT

RULING

Date: 29/9/2022 & 30/9/2022

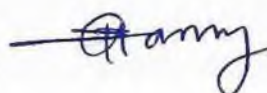
BARTHY, J.

The applicant Jared Onesmo had lodged this application under section 14(1) of the Law of Limitation Act, [Cap 89 R.E. 2019] and any enabling provision of the law seeking to be granted;

1. Extension of time within which to file his application to set aside the dismissal order issued in Civil Appeal No. 13 of 2020 before Hon. M.G. Mzuna on 12th October, 2021.
2. Any other relief(s) this Honourable Court may deem fit to grant.

The application is supported by an affidavit of Mr Jared Onesmo, the applicant. The respondent opposed the application by counter affidavit sworn by Mr. John Kivuyo Lairumbe the advocate for the respondent.

The brief background will bring highlight to the present application. The applicant lodged an appeal before this court which was Civil Appeal No. 13 of 2020 which was before Hon. Justice M.G. Mzuna. Upon several dates



of adjournment, the matter was dismissed on 12/10/2021 for want of prosecution.

On 28th February, 2022 the applicant filed the case vide Misc. Civil Application No 19 of 2022 to set aside the dismissal order of Civil Appeal No. 13 of 2020. However, the said application was matter was struck out on 14th June 2022 for the reason that it was time barred.

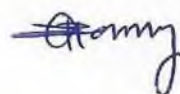
The applicant is now before this court praying to be granted the extension of time to file the application to set aside the dismissal order of Hon. Justice Mzuna of Civil Appeal No. 13 of 2020.

During the hearing of this application the applicant appeared in person whereas Mr. John Lailumbe the was the counsel for the respondent. The application was argued by oral submissions as follows;

The applicant in his submission argued that, after filing his Civil Appeal No. 13 of 2020 on this court, before he was informed of the date of this matter, he fell sick from March 2021 and he could not make follow up to his case and he became financially drained to hire an advocate.

On February 2022 he became better and when he made a follow up of his case, he was informed it was dismissed for non-appearance. He resorted to file the application to restore the appeal but it was struck out and now he is before this court for this application.

He prayed for this application to be granted as prayed so that he can file the application to set aside the dismissal order on the appeal so that the appeal ca be heard on merit. He concluded stating that if the application will be granted the respondent will not be prejudiced. But if this application will be rejected, he will lose everything he has invested.



Mr. Lailumbe contested the application stating that the applicant had submitted on some facts which were not part of the pleadings. Counter arguing in line with his counter affidavit, he submitted that for the court to set aside its own decision, the applicant must give sufficient reason and account on each day delayed to file the matter.

Therefore, Mr. Lailumbe opposed the application by addressing the following questions;

1. Whether the applicant has sufficient reasons to fail to entertain his appeal No. 13/2020.
2. Whether the applicant has accounted on the delayed days to file this application.
3. Whether the allegation of sickness constitute sufficient reason.

Submitting to the first issue, he argued that, the applicant together with the affidavit in support of the application have not adduced any sufficient reasons to warrant the application to be granted.

He went on to state that, the records of the trial court shows that the applicant did not appear in court since he filed his appeal. That is, from 16/3/2021 when it appears for the first order up to 12/10/2021 where the matter was dismissed with costs for non-appearance of the appellant. It was argued that, the attitude of the applicant has to be blamed for failure to appear before the court without any good reason.

With respect to the second issue, he contended that it is an established law that if a party seeks for orders of restoration, he must give sufficient reason. The applicant on his affidavit and arguments he claimed to be sick and attend in hospital, therefore he could not attend his case.

Mr. Lailumbe stated that; the reason of sickness is sufficient only if there is the proof. However, the medical record shows that he attended at the hospital on 11/6/2021 and on 8/8/2021. Whereas, his appeal was dismissed on 12/10/2021. Also, the said medical reports had no stamp or seal.

To buttress his argument, he cited the case of **Lange Chacha v. Elifas Nyiragu** (1967) HCD 115 where it was held that, the court could not grant extension of time without clear proof.

He further argued that, to grant an extension of time it is in the discretion of the court. In the case **Michael Lesani v. John Aliave** [1997] TLR 192 it was held that, the court has power to grant extension of time if sufficient reasons have been given.

On the claim that the applicant was making the follow up at the Resident Magistrates court for his case, Mr. Lailumbe contested that there was no any proof that he was meeting with the court clerk. Guided by the decision of **Isaac Sebegele v. Tanzania Port Land Cement**, Civil Application No. 25/2022 where the court cited with approval the case of **Airtel Tanzania Ltd v. Misterlight Electrical and another**, Civil Application No. 27/1 of 2021 where the court held that the evidence in support of applicant was necessary and the name of the clerk would have been mentioned in the affidavit.

He added that the applicant has failed to account for each day of he had delayed. From the date the matter was dismissed the said matter on 12/10/2021 up to the date this application was filed on 1/7/2022. There has been a delay for eight months and the applicant could not account for

any of the date. He made reference to the case of the **Airtel Tanzania Ltd (supra)**, the delay has to be accounted even for the single day of delay.

He went further to argue that the applicant has been abusing court process for filing endless litigations against the cardinal principle that there must be an end to litigations. He concluded by stating that the applicant was negligent and did not offer sufficient reason to warrant the application. He prayed for this matter to be dismissed for wanting merit.

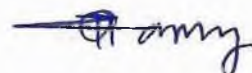
The Applicant on his rejoinder he insisted to have accounted on his delay to file the application as per paragraphs 6 and 7 of his affidavit which clearly shows he was sick at all the time up to February 2022.

With respect to medical reports attached he maintained that he got the report on 8/8/2021 but they were the results of the previous treatment. With the problem of respiratory system at that time he was required to isolate himself. He claimed the medical reports were issued without the seal but they bore headed address.

To conclude, he stated that the major reason which made him fail to make follow up on his appeal was due to sickness which was the sufficient cause to be considered in granting this application as he was not notified to make appearance before the trial judge.

The court having heard the rival submissions of each side, I will proceed to determine the matter, and basically in this application the key issue is;

Whether the applicant had sufficient reason for delay to warrant grant of the application.



It is an established principle that for the court to give an extension of time, the party must give sufficient reasons to account for his delay, reasons for his delay, if there are sufficient reasons for delay and no prejudice to the respondent if the time will be extended; see the case of **Mbogo v. Shah** (1969) EA 93.

Basically, in this matter for the court to consider granting the extension of time to file for application to set aside dismissal order, the court must consider the affidavits, counter affidavit and the arguments of both parties if they fit in that principle.

As to what constitute sufficient reason, cannot be laid down by any hard or fast rule. It must be determined by reference to all circumstances for each case.

In the present application, the applicant has stated that he was sick from March 2021 up to February 2022 for about 11 months. The sickness can be a sufficient reason for one to fail to attend before the court.

The court after establishing that there is the sufficient reason. The applicant had attached medical report on his affidavit, which are A3 collectively are the medical report which were all for medical test dated 11th June 2021, 11th June 2021 and 8th August 2021. These laboratory tests were not giving any medical history or detail that the applicant was sick from March 2021 to February 2022 and do not highlight what he was suffering from.

As flaunted by Mr. Lailumbe the counsel for the respondent that the delay was not accounted for each day. I agree with the argument as the applicant had given an omnibus fact not backed up by the proof of each

day that he was sick for the whole period he claimed to be. Without the proof, the court cannot take assumption on the facts.

The emphasis on this point has been made in various decisions of the court as in the case of **Tanzania Fish Processors Limited v Eusto K Ntagalinda**, Civil Application No. 41/08 of 2018, CAT at Mwanza and **Dar es Salam City Council v. Group Security Co. Ltd**, Civil Application No 234 of 2015, CAT at DSM (both unreported).

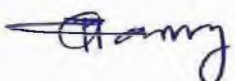
In the upshot, the applicant has failed to show sufficient good reason and to account for each day of his delay for this application to be granted. Thus, this application has no merit and it is hereby dismissed. It is so ordered.

DATED at Arusha this 4th October, 2022.




G.N. BARTHY
JUDGE
4/10/2022

Delivered in the presence of the applicant in person and Mr. John Lailumbe the Counsel for the respondent.


G.N. BARTHY
JUDGE
4/10/2022