

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. CIVIL APPLICATION No.75 OF 2022

(Arising from PC Civil Appeal No. 10 of 2021 in the High Court of Tanzania at Mwanza before Hon. Mnyukwa, J, Arising from Civil Appeal No. 31 of 2020 in the District Court of Geita before S.L. Maweda SRM, Originating from Civil Case No. 127 of 2020 in the Primary Court of Nyamkumbu before Hon. V.J. Mwanasenga, RM)

NHYAMA ANDREA KANYALA APPLICANT

Versus

MAJALIWA INVESTMENT Co. Ltd RESPONDENT

RULING

30th September & 7th October 2022

OTARU,J.:

The Applicant herein is applying for extension of time within which to lodge a Notice of Appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania at Mwanza delivered on 13th June 2022.

The Application is brought by way of Chamber Summons under Section 11(1) of the **Appellate Jurisdiction Act**, (Cap 141 R.E. 2019) and supported by Affidavit deposed by **Nhyama Andrea Kanyala** on 28th June 2021, but filed on 14th July 2022 which is opposed by Counter Affidavit deposed by **Vianey Mbuya** on behalf of the Respondent.

M. Otaru

The Application was argued before me orally. The Applicant appeared in person, unrepresented. The Respondent on the other hand was represented by learned advocate, Angelo James.

The Applicant prayed to adopt his Affidavit and explained the reason for his delay in filing the Notice as sickness from 10th to 16th of June 2022. That he was hospitalized during that time in Tabora. He prayed for the Application to be granted.

The learned advocate for the Respondent also prayed to adopt the Affidavit filed and strongly opposed the Application. He submitted that Judgment was delivered on 13th May 2022 but this Application was filed on 18th July 2022, more than 65 days after delivery of the Judgment, therefore 35 days of delay. That the Applicant has only accounted for seven days from 10th to 16th of June 2022 while it is a legal requirement for each and single day to be accounted for. As the Applicant has failed to account for each day the Application should not be granted.

Counsel referred the Court to paragraph 6 of the Applicant's Affidavit pointing out what the Applicant termed as legal irregularities. He argued that these can not be reasons for extending the time but reasons for appealing thus can not be discussed at this stage. He urged the Court to dismiss the Application with costs for lack of merits.

I have given careful consideration to the arguments for and against the Application herein advanced by the parties. The central issue for determination is **whether sufficient reasons have been advanced to warrant the extension of time sought.**

This Court is properly moved through Section 11(1) of the **Appellate Jurisdiction Act**, (Cap 141) to extend the time within which to file the Notice to Appeal. Rule 83(2) of the **Court of Appeal Rules**, 2019 provides for thirty (30) days for filing the Notice of Appeal. Upon failure to file the Notice of Appeal within the specified time, this Court has discretionary powers to grant extension of time; but that discretion has to be exercised according to the rules of reason and justice.

In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Appeal No. 2 of 2010 (unreported) where the Court was faced with a similar situation considered 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 Application for extension of time the Applicant will succeed upon showing good cause why his Application should be granted. It has been 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) that a good cause to warrant the extension of time is not provided for but it depends on the circumstance of each and every case.

In the Application at hand, I have gone through the parties' submissions and revisited the Applicant's Affidavit explaining the reasons for the delay.

This Court calculated the period of the delay in filing this Application. The decision of the High Court sought to be challenged was delivered on 13th May 2022 and this Application was filed in this Court on 14th July 2022. The 30 days provided by the law expired on 13th of June 2022. At that time the Applicant was hospitalized until 16th of June 2022, assuming he was recovering from sickness, 5 days may be deducted for that until 21st June 2022. From 21st June 2022 up to the time this Application was filed on 14th July 2022 is 23 days.

In determination as to whether the Applicant managed to move this Court, it is settled and clear, as pointed by the Respondent's counsel, the

Applicant must bring to the Court sufficient reasons to account for each day of delay. That means that the Applicant is required to account for each day of delay from 13th June 2022 when his statutory time ended to 14th July 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 is required to account for each day of his delay. As seen above, the Applicant delayed for 28 days. He is able to account for, for only 5 days. Further, the Applicant deponed the Affidavit in support of the Application on 28th June 2022 but the same was filed on 14th July 2022, about 16 days later. Again, there is no account of what had caused such a delay even though the documents were ready for filing.

The principle of accounting each day of delay has been 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: -

M. Qasim

"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; **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 has not been able to account for each day of delay. For the reasons advanced above, this Court Supports the Respondent's submission that the Applicant failed to show good cause for his delay moving this Court to exercise its discretion. As such, I shall not go to other criteria for the Court to consider in extending the time.

The Application is thus devoid of merits and it is hereby dismissed.

No order as to costs.

It is so ordered.

M. Othman

DATED at MWANZA this 07th day of October, 2022.

M. Otaru
M.P. OTARU

JUDGE

This Judgment is delivered under my hand and the seal of this Court this 07th day of October, 2022 in the presence of Nhyama Andrea Kanyala, the Applicant and the absence of Majaliwa Investment Co. Ltd, the Respondent.



M. Otaru
M.P. OTARU
JUDGE
07/10/2022