

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 180 OF 2020

SAID KIPAGAME KASWELA APPLICANT

VERSUS

MOSHI ALFAN RESPONDENT

RULING

14th September, & 13th October, 2022

ISMAIL, J.

The applicant has moved the Court to extend time within which to apply for leave to appeal to the Court of Appeal. The application comes on the heels of a setback suffered as a result of striking out of his application for leave (Misc. Civil Application No. 609 of 2021). The said application was adjudged time barred. Through the instant application, the applicant intends to make amends and bring his journey to the Court of Appeal of Tanzania back on track.

In the affidavit that supports the application, delay by the Court in supplying copies of the judgment and proceedings has been cited. In other

words, this is a delay that the applicant attributes to the Court's dilatoriness in supplying copies he requested.

The application has drawn a criticism from the respondent.

On appearance in Court on 14th September, 2022, the parties urged the Court to allow them to file written submissions as a way of disposing of the application. This prayer was acceded to and the parties were ordered to file their submissions consistent with a schedule drawn by the Court. This schedule was duly complied with.

In his submission, the applicant argued that, whilst there was a 53-day delay in taking action, such delay was caused by the Court's delay in supplying him copies of the drawn order and ruling, and that such delay was an action which was beyond his control. He took the view that, in law, such delay may constitute the basis for enlargement of time, consistent with the provisions of section 19 (2) of the Law of Limitation Act, Cap. 89 R.E. 2019. The cited provision allows exclusion of the days during which the applicant was awaiting the availing of the said copies. To buttress his position, the applicant cited the decision of the Court of Appeal of Tanzania in ***Bukoba Municipal Council v. New Metro Merchandise***, CAT-Civil Appeal No. 374 of 2021 (unreported), where in it was held:

*"It should be kept in mind the rationale behind such automatic exclusion was to avoid multiplicity of, and delay in disposal of cases (see **the Director of Public prosecutions v. Mawazo Saliboko @ Shagi & 15 Others**, Criminal Appeal No. 384 of 2017 (unreported))."*

The applicant was also emphatic that the delay was not caused by negligence on his part, urging the Court to consider his case in the same light the Court of Appeal considered the case of **Total (T) Ltd v. Samwel Mgonja**, CAT-Civil Application No. 31 of 2016 (unreported), in which delays not caused by the applicant were tolerated, resulting in the granting of an application for extension of time.

Submitting in rebuttal, the respondent's starting point was to fault what he considered as an introduction of new matters which were not pleaded in the affidavit that supports the application. While citing the Court's decision in **Car Track Distributors Limited v. MKB Security Company Ltd**, HC-Misc. Land Application No. 567 of 2022 (unreported), the respondent maintained that, in law, parties are bound by their own pleadings. Making reference to the instant application, the respondent contended that only three of the referred documents were attached to the application while the rest weren't.

With respect to delays, the respondent contended that time spent on seeking legal assistance was not pleaded in the affidavit, and that to the extent that this was introduced in the course of the submission, the same cannot serve as good reason for justifying the delay. To fortify her view, the respondent cited two decisions. These are ***Elfrazia Nyatega & 3 Others v. Capin Mining Ltd***, CAT-Civil Application No. 44 of 2017; and ***Nocholaus Kilapilo v. Grace Mwakabenga***, HC-Misc. Civil Application No. 11 of 2021 (both unreported).

Reverting back to extension of time, the respondent contended that extension of time is dependent on showing good cause and accounting for each day of delay, as was held in ***Nocholaus Kilapilo v. Grace Mwakabenga*** (supra); and ***Interchick Company Limited v. Mwaitenda Ahobokile Michael***, CAT-Civil Application No. 132/01 of 2017 (unreported).

Disposal of this matter begins posing a question on whether the application has what it takes to make it succeed.

In applications for extension of time, the court's exercise of its discretion to grant it is wholly dependent on the applicant's ability to demonstrate existence of sufficient cause. This was underscored in the case

of ***Blue Line Enterprises Ltd. v. East African Development Bank***, HC-Misc. Application No. 135 of 1995 (unreported), in which it was held:

"... it is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by the Court."

It is worth of a note, that sufficient cause in this context must not only address the reasons for the delay, but also reasons as to why such extension should be granted (See: ***Republic. v. Yona Kaponda and 9 Others*** [1985] TLR 84 (CA)). It is also significant to state that what constitutes sufficient cause has been widely covered in a multitude of court decisions. In the case of ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported), the Court of Appeal of Tanzania set out key conditions which constitute the applicant's basis for quest for extension of time. These conditions are:

- "(a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*

- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*
- (d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.”*

The reason cited by the applicant is that there was a delay in being supplied with copies of the drawn order and the ruling against which the impending challenge is contemplated. The respondent has not seriously disputed the contention that such copies were supplied 53 days after they were requested. The record indicates that said copies were supplied to the applicant on 18th November, 2021, while pronouncement of the decision was done on 27th September, 2021.

The applicant has also stated that subsequent to being furnished copies of the decision, he spent his time in Court, pursuing an application which was preferred in an erroneous manner, and one which was adjudged time barred and struck out.

Taken in their totality, these delays reveal no fault of the applicant, meaning that they are justified delays and constitute a sufficient cause. They are enough to trigger the Court’s discretion to extend time.

Consequently, I find and hold that the application has met the threshold necessary for its grant and I grant it. Accordingly, the applicant is given fourteen (14) days, from the date hereof, within which to institute an application for leave to appeal to the Court of Appeal of Tanzania. Costs to be in the cause.

It is so ordered.

DATED at **DAR ES SALAAM** this 13th day of October, 2022.



M.K. ISMAIL

JUDGE

13.10.2022

