

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO.15 OF 2022**

*(Originating from this Court at Dar es Salaam Registry in Civil Appeal No.124 of 2020)*

**THE MANAGING DIRECTOR MWANANCHI**

**COMMUNICATIONS LTD AND 4 OTHERS..... APPELLANT**

**VERSUS**

**CHRIS MAINA PETER.....RESPONDENT**

**RULING**

*Date of Last Order: 10/10/2022*

*Date of Ruling: 18/10/2022*

***Kamana, J:***

The Managing Director of Mwananchi Communications Ltd, the Executive Director the Citizen, the Managing Editor the Citizen, the Publisher of the Citizen and Louis Kolumbia (the Applicants) have knocked the doors of this Court seeking for extension of time within which to apply for a leave to appeal to the Court of Appeal against the decision of this Court in Civil Appeal No. 124 of 2020 which was in favour of Chris Maina Peter (the Respondent). The application was made under sections 14(1) and (2) and 19(1) and (2) of the Law of Limitation Act, Cap.89 [RE.2019] and Order XLIII Rule 2 of the Civil Procedure Code, Cap.33 [RE.2019].

In support of the application, Josephat Kasegero, the Principal Officer of the Applicants filed an affidavit. On the other hand, Advocate Atlay Esao Thawe countered the Applicant's affidavit. The application was heard by way of written submissions of Advocate Antipas Lakham for the Applicants and Advocate Thawe for the Respondent.

Briefly, it was the contention of the Applicants that they failed to lodge an appeal timely due to the fact that they were not supplied with the impugned judgment and decree within the time. It was contended in paragraph 6 of the affidavit that the impugned judgment was delivered on the 17<sup>th</sup> July, 2021. It was further averred that on the 9<sup>th</sup> August, 2021, the Applicants, through the services of Apex Attorneys, requested, in writing, the Deputy Registrar of the High Court to supply them with copies of judgment and decree for the purpose of lodging an appeal to the Court of Appeal. On the following day, the Applicants filed a notice of appeal with a view to registering their intention to appeal against the decision of this Court in Civil Appeal No. 124 of 2020.

It was submitted by the Applicants through paragraph 9 of the affidavit that despite several follow ups with the Court's Registry, the requested copies of judgment and decree were furnished to them on 8<sup>th</sup> December, 2021 which was beyond the prescribed period for lodging an application for leave to appeal to the Court of Appeal. The Applicants argued that their delay to file an application for leave to appeal to the Court of Appeal was not intentional or inaction on their part since the said documents were not supplied to them timely. To buttress their position, the Court was referred to the persuasive case of **Lewis Bernard Makala v. Lojasi Mutuka Mkondya and Others**, Land Appeal No.33 of 2017 (Unreported) in which this Court observed that waiting for copies of judgment and decree is a sufficient reason for the delay.

The Applicants submitted that after being furnished with copies of judgment and decree they had to find another advocate to handle the matter. It was their contention that it took them twenty days (from 8<sup>th</sup> to 28<sup>th</sup> December, 2021) to find an advocate since it was holiday season.

They further argued that the application was prepared from 28<sup>th</sup> December, 2021 to 6<sup>th</sup> January, 2022.

In view of their averments, it was the applicants' position that the delay was not inordinate and they were diligent in filing this application. To bolster their argument, the Applicants referred this Court to the decision of the Court of Appeal in the case of **Republic v. Yona Kaponda** [1985] T.L.R 84 in which the Court stated that an applicant for extension of time should show sufficient cause of delay. They prayed this Court to exercise its discretion to grant their application as there are points of law which require intervention of the Court of Appeal.

In countering the arguments of the Applicants, the Respondent through the counter affidavit of Advocate Thawe disputed the Applicants' testification. With regard to late supply of copies of judgment and decree, the Respondent stated in paragraph 8 of the counter affidavit that the alleged follow ups with the Court Registry are facts only known to the Applicants' Principal Officer and they are not supported with an affidavit of any Registry Officer or any credible evidence.

The Respondent was of the position that the delay to file this application was inordinate and mainly attributed by lack of diligence on the part of the Applicants. It was the contention of the Respondent that the Applicants' submission failed to establish sufficient cause to warrant this Court to extend the requested time.

Replying to the submissions of the Respondent, the Applicants contended that the Respondent's argument that follow ups with the Court Registry in respect of the requested judgment and decree was not supported by an affidavit of Registry Officer is devoid of merits. They argued that

evidence as to follow ups is direct evidence which does not need to be supported by an affidavit of the Registry Officer. As regards to lack of diligence, the Applicants contended that the affidavit and their submission have accounted for each day of delay which included the weekends and court vacation.

Before determining this application, I feel obliged to comment on the way the learned Counsel for both parties submitted their arguments. With due respect deserved to the legal minds, their submissions to some extent introduced some new issues which were not pleaded in the affidavits. It is trite law in this jurisdiction that affidavit in itself is evidence and in that case, submission serves the purpose of explaining the evidence contained in the affidavit. In this regard, I am persuaded by my learned Brother *Kahyoza, J* in the case of **G4S Secure Solutions Ltd v. Multinational Procurement Services Ltd and Others**, Civil Revision No. 6 of 2022 in which he stated:

*'The evidence is found in the affidavit and the submission explains issues raised in the affidavit. I will therefore not discuss matters not raised in the affidavit.'*

Accordingly, I will not delve into unpleaded issues such as the service of judgment and decree via email as submitted and replied by the Respondent and the Applicants respectively.

Having gone through affidavits and submissions of the Parties, the issue for the determination of this Court is whether the Applicants have furnished sufficient reasons for this Court to extend the requested time. In determining this application, I will be guided by the celebrated case of

**Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Appeal No.2 of 2010. In the said Case, the Court of Appeal laid down factors to be considered before granting extension of time as follows:

- (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 that he intends to take;*
- (d) If the court feels that there are other sufficient reasons, such as the evidence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.'*

It was the submission of the Applicants that they requested copies of judgment and decree on 9<sup>th</sup> August, 2021 and the same was supplied to them on 8<sup>th</sup> December, 2021. To them, such period had been accounted for since they were waiting for copies of judgment and decree. On the other hand, the Respondent was of the view that the said period had not been accounted for in the absence of an affidavit taken by the Registry Officer evidencing that the said judgment and decree were delivered on 8<sup>th</sup> December, 2021.

According to section 19(2) of the Law of Limitation Act, Cap.89, the period between requisition of judgment or decree and delivery of the same is excluded in computing the period of limitation. The section reads:

*'In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.'*

It is undisputed that the Applicants requested copies of the judgment and decree on 9<sup>th</sup> August, 2021. However, it is disputed by the Respondent that the said copies of judgment and decree were issued on 8<sup>th</sup> December, 2021. In view of that I think it is prudent to determine when the said copies of judgment and decree were ready for collection.

In both affidavit and submission in chief, it is not stated when the Applicants became aware as to when the requested copies of judgment and decree were ready for collection. What is averred in the affidavit and submission in chief is when the said documents were collected by the Applicants from the Registry. However, the Applicants, as rightly contended by the Respondent, failed to prove their arguments with regard to the date of collection of the copies of judgment and decree with an affidavit of the Registry Officer or a copy of the dispatch book they signed when collecting the documents from the Registry. In the absence of that proof, I am inclined to hold that the Applicants failed to account for each day of delay from 9<sup>th</sup> August to 8<sup>th</sup> December, 2021.

Assuming that the Applicants managed to account for each day of delay between 9<sup>th</sup> August to 8<sup>th</sup> December, 2021, still the Applicants failed to account for a period between 8<sup>th</sup> December and 28<sup>th</sup> December 2021. The

arguments that they spent twenty days in search of the Advocate is devoid of merit regardless that the period in question was holiday season. It is untenable in my mind that the Applicants especially the 1<sup>st</sup> Applicant, a company residing in Dar es Salaam, used twenty days to find a legal representation. This is a clear manifestation of lack of diligence on the part of the Applicants.

From the above reasons, I dismiss the application with costs. It is so ordered.

**DATED at DAR ES SALAAM** this 18<sup>th</sup> day of October, 2022.



KS KAMANA

**JUDGE**



Delivered at Dar es Salaam in Chambers this 18<sup>th</sup> day of October, 2022  
in the presence of both Counsel for both parties.