

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 535 OF 2021

(Originating from Misc. Civil Application No. 175 of 2016)

HONORATA VITALIS.....APPLICANT

VERSUS

HENRY RWEKAZA BATAMUZI.....RESPONDENT

RULING

Date of Last Order: 07/09/2022

Date of Ruling: 21/10/2022

E.E. KAKOLAKI J.

This is an omnibus application preferred by applicant **Honorata Vitalis** under sections 11 (1) and 5 (1) (c) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019], supported by two affidavits duly sworn by the said applicant.

The applicant is in pursuit of two orders, one, for extension of time within which to file leave to appeal and second, for leave to appeal to the Court of Appeal against the decision of this Court in Misc. Civil Application No. 175 of 2016 handed down on 17/08/2018 before his lordship Mwandambo J (as he then was). Other reliefs sought are cost of this application and any other

reliefs that this Court may deem fit to grant. The application met a strong resistance from the respondent who filed the counter affidavit to that effect.

Briefly as gathered from the affidavits, the applicant in Misc. Civil Application No. 175 of 2016, prayed for an order of extension time within which to file an application for setting aside an ex parte dismissal order for want of prosecution delivered by this Court on 23/11/2011 before Hon. Munisi J, the application which ended up dismissed with costs for want of merit on 17/08/2018. Aggrieved with that dismissal order, the applicant expressed his intention to appeal by filing the Notice of Appeal to the Court of Appeal on 24/08/2018 and subsequent to that, on 31/08/2018 an application for leave to appeal to the Court of Appeal vide Misc. Civil Application No. 506 of 2018. According to the applicant, the above application faced strong resistance from the respondent herein who filed a counter affidavit and raised a preliminary objection on defect of jurat of attestation, the objection was not determined by this Court, Kulita J, instead the Court went far to decide the application on merit to the effect that, it was not accompanied with the orders the leave sought to be appealed, thus striking it out on 11/03/2021. Undaunted the applicant on 24th March 2021, preferred another application for extension of time within which to file application for leave to appeal to

the court of appeal of Tanzania, vide Misc. Civil Application No. 132 of 2021, the application which again was also struck out on 08/09/2021, for want of properly cited enabling provision. Tirelessly the applicant has preferred the present omnibus application as intimated above.

At the hearing both parties appeared represented as the appellant hired the services of Mr. Issa Mrindoko while the respondent enjoyed the services of Mr. Nehemia Gabo, both learned counsels. Parties were heard by way of written submission. Notably, as a matter of general principle, the powers whether to grant or refuse an application for extension of time is entirely in the discretion of the Court, which discretion has to be exercised judiciously. It is also settled law that extension of time will be granted, upon the applicant demonstrating sufficient cause for the delay. Sufficient cause is not specifically defined and it depends on deliberation of various factors advanced by the applicant as to why the application should be granted. See the case of **Regional Manager, Tanroads Kagera v. Ruaha concrete Company Ltd**, Civil Application No 96 of 2007 and **Tanzania Coffee Board Vs. Rombo Millers Ltd**, Civil Application No 13 of 2015 (all CAT-unreported). It was held in **Regional Manager, Tanroads Kagera** (supra) that:

"The test for determining an application for extension of time, is whether the applicant has established some materials amounting sufficient cause or good cause as to why the sought application is to be granted."

Similarly in demonstrating sufficient cause for the grant of application, the applicant has also to account for each and every day of delay as it was stated in the case of **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 and **Sebastian Ndaula Vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (CAT-unreported). In **Sebastian Ndaula** (supra) on the duty of the applicant to account for each day of delay it was stated thus:

"...even a single day delay has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

In this ruling I am intending to start address first the prayer for extension of time within which to file the application for leave to appeal to the Court of Appeal out of time, as its result determines the fate of the second prayer for grant of leave to appeal to the Court of Appeal. In his submission in support of the first prayer Mr. Mrindoko while adopting the applicant's affidavit in support of the application relied on the ground of technical delay. Quoting paragraphs 1,2,3,4,5,6,7 and 8 of the applicant's affidavit which according

to him were noted by the respondent, Mr Mrindoko argued that, throughout the period from the time of dismissal of Misc. Civil Application No. 175 of 2016 on 17/08/2018, the applicant did not seat idle at her back but rather was busy in court corridors in pursuit of her right through different application though face with various legal technicalities rendering the said applications unsuccessful. He mentioned the said application which were bonafidely prosecuted to be Misc. Civil application No. 506 of 2018 before Kulita J and Misc. Civil Application No. 132 of 2021 which was technically struck out lastly on 08/09/2021. In view thereof, Mr Mrindoko submitted, the delay was not actual but was a mere technical delay. He relied on the case of **Emmanuel Rurihafi & Another Vs. Jonas Mrema**, Civil Appeal No. 314 of 2019 CAT (unreported) to cement his submission in that technical delay is sufficient ground for extension of time. Mr. Mrindoko was of the submission therefore that, the applicant cannot be taken to have acted negligently as the striking out of the two application based on technical grounds and not negligence of the applicant. To him the applicant managed to advance sufficient cause warranting this Court grant her extension of time and so prayed for the orders.

In response Mr Gabo started by adopting the respondent's counter affidavit to form part of his submission. Contended that, applicant has not demonstrated sufficient reasons to warrant this court exercise its discretionary powers to grant the sought orders. According to him, the applicant failed to account for 40 days of delay since delivery of the ruling in Misc. Civil application No 132 of 2021 was delivered on 08/09/2021 up to time of filing of this application 18/10/2021. He cited to the Court the case of **Tanzania Fish Processors Limited Vs. Festo K. Ntagalinda**, Civil Application No.41/08 of 2018, which insisted on the importance of accounting for each delayed day/each day of delay something which was not done in applicants' affidavit, hence insistent that, the applicant failed to account for each and every delayed day. That aside, Mr. Gabo argued, it is not worth granting extension of time to the applicant as Misc. Civil Application No 506/2018 and Misc. Civil Application No.132 of 2021 were struck out of the court's registry due to negligence of her advocate, which again is not sufficient cause for extension of time.

I have keenly travelled through the affidavit and counter affidavit and considered the submissions by the parties for and against this Application. This Court under section 11(1) of AJA is crowned with jurisdiction to

entertain this application and grant the prayers upon demonstration of sufficient cause by the application. Now the issue which the Court is called to answer is *whether the applicant has advanced good cause warranting grant of extension of time to her for filing the application for leave to appeal to the Court of Appeal.*

It is common ground in this matter that, the impugned decision sought to be challenged by the applicant was delivered on 17/08/2018. And the law under Rule 45 (b) of Tanzania Court of appeal Rules, 2009, provides that for an application for leave for to appeal to the Court of Appeal to be filed in Court within 14 days of delivery of the decision sought to be challenged. Thus in this matter the application for leave to appeal to the Court of Appeal was supposed to be filed not later than 31st August 2018. And guided by the principle laid down in the case of **Sebastian Ndaula** (supra), the applicant is supposed to account for more than 1000 of the delay as the application was filed on 18/10/2021.

Accounting for such period as submitted by Mr. Mrindoko, the applicant has advanced the ground of technical delay claiming that she was at all that time diligently prosecuting Misc. Civil Application No 506 of 2018 and Misc. Civil Application No. 132 of 2021, the reason which Mr. Gabo challenges in that

the applicant's advocate acted negligently for preferring hopeless applications. It is true as submitted by Mr. Mrindoko that from 17/08/2016 which the decision sought to be challenged was delivered in Misc. Civil Application No. 175 of 2016 up to the time when Misc. Civil Application No. 132 of 2021 which was struck out on 08/09/2021, the applicant was in the court's corridors trying to pursue his right. It also stated in paragraph 9 of the affidavit, soon after the application was struck out on 13/09/2021, the applicant requested for copies of ruling and drawn order for the purposes of preferring this applicant. Hence all that period deserves to be excluded from being reckoned. As each case has to be decided on its own facts, I find the period between 17/08/2016 up 13/09/2021 is accounted for.

Nevertheless applicant did not state in her application as when she was availed with the requested copies of ruling and drawn order in respect of Misc. Civil Application No. 132 of 2021. It is from that position, I hold the period of 32 days from 13/09/2021 when the copies of ruling and drawn order in Misc. Civil Application No. 132 of 2021 were requested up to 15/10/2021 when the present application was not accounted for. As alluded to earlier on, the requirement for accounting for every day of delay has been emphasized by the Court in numerous decision, such as the case of **Bushiri**

Hassan Vs. Latifa Lukio, Mashayo, Civil Application No. 3 of 2007 (unreported) and **Karibu Textile Mills v. Commissioner** General (TRA), Civil Application No. 192/20 of 2016 (unreported). Basing on the above authorities, to me that unaccounted period of 32 days is inordinate, hence I hold that the applicant has failed to demonstrate sufficient cause warranting this court exercise its discretion to grant her the sought order.

As the prayer for extension of time within which to file an application for leave to appeal to the Court of Appeal against the decision of this Court in Miscellaneous Civil application No. 175 of 2016 delivered before Hon. Mwandambo J. on 17th August, 2018 is without merit, the same is hereby dismissed.

Subsequent to that, since determination of the second prayer is subject to grant of the first prayer which is already dismissed, I find the second prayer in this application to be incompetent before the court hence proceed to struck it out with costs.

It is so ordered.

Dated at Dar es Salaam this 21st October, 2022.



E. E. KAKOLAKI

JUDGE

21/10/2022.

The Ruling has been delivered at Dar es Salaam today 21st day of October, 2022 in the presence of Mr. Baraka Msama, advocate holding brief for Mr. Adam Mwambene advocate for the applicant and well as that brief of Advocate Nehemiah Gabo, for the Respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

21/10/2022.

