

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 556 OF 2021

(Arising from the judgment and decree of the Resident Magistrates Court of Dar es salaam at Kisutu in Civil Case No.160 of 2018, before A.W. Mmbando, PRM dated 26/08/2021)

ASHTON MEDIA LIMITED.....APPLICANT

VERSUS

SIEGFRIED AUGUSTINO RIMOY.....1ST RESPONDENT

NEELKANTH CABLES LTD.....2ND RESPONDENT

RULING

Date of Last Order: 20/09/2022

Date of Ruling: 28/10/2022

E.E. KAKOLAKI, J.

This is an application for enlargement of time within which to file a Notice of Appeal out of time against the decision of the Resident Magistrate Court of Dar es Salaam at Kisutu in Civil Case No.160 of 2018, handed down on 26/08/2021. The Court is moved under section 14(1) of the Law of Limitation Act, Cap. 89 [R. E. 2019] (the LLA) and the chamber summons is supported by affidavit dully affirmed by the applicant's principal officer one Irfan Alarakhia. The application is contested by the 1st respondent who after being served filed his counter affidavit to that effect as the 2nd respondent's

presence could not be secured hence hearing proceeded ex-parte against him after following all necessary service procedures.

Briefly, before the trial court in Civil Case No.160 of 2018, the 1st Respondent sued the Applicant and the 2nd Respondent herein jointly and severally, claiming for payment of TZS 50,000,000/= as damages for the injuries sustained to him by the billboard with nexus to them that had fallen and seriously injured him. At the end of the trial judgment was entered in favour of the 1st Respondent and ordered the Applicant to pay him Tshs.20,000,000/= for the injuries sustained as well as interest at the rate of 7% from the date of judgment to the date of payment in full. The Applicant being aggrieved with the said decision and desired to appeal against it to this court found himself fixed out with time limitation, hence the present application seeking to be extended with time to challenge the decision.

When the matter was called for hearing both Applicant and Respondents were represented by Mr. Edward Chuwa, Advocate and Mr.Denis Malamba, Advocate respectively. With leave of this court the hearing proceeded by way of written submissions in which both parties complied to the filing schedule. I have keenly gone through and internalised the submissions made by the

counsels as well as the pleadings. I find no benefit to reproduce the submissions here for the reasons which will be apparent soon.

As alluded to above this application has been preferred under section 14(1) of the LLA, which provides thus:

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

Under the above law this Court retains its discretionary powers to enlarge time upon good cause being shown by the applicant, provided that such discretion is judiciously exercised. The law is very categorical that such an application can be brought before or after expiry of the period of limitation prescribed for such appeal or application. It is also settled in a number of pronouncements of this Court and Court of Appeal that, there is no fast and hard rule on what amounts to good cause as a number of factors have been taken into account. These include whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack

of diligence on the part of the Applicant and whether the Applicant has accounted for each and every day of the delay. See the cases of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001, **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 and **Ibrahim Twahil Kusundwa and Another Vs. Epimaki S. Makoi and Another**, Civil Application No.437/17/2022 (all CAT-unreported).

The decision sought to be challenged was delivered on 26/08/2021 and this application was filed on 01/11/2021 exactly sixty seven (67) days after handing down the said decision. In his bid to advance good cause for this Court to exercise its discretion to grant the application, the applicant has raised two grounds. **One**, the time spent awaiting for supply of the copies of judgment and decree necessary for filing the appeal and **second**, that there is illegality in the decision sought to be appealed against. It is learnt from the pleadings and submissions by the parties in support and against the application that, the same was preferred and submission made under assumption that, time limitation to appeal against the decision of District

Court or Resident Magistrates Court when exercising its original jurisdiction in Civil matter under the Civil Procedure Code, [Cap. 33 R.E 2019] is 45 days, as provided under item 2 of Part II of the schedule to the LLA.

Undoubtedly, both parties proceeded under wrong belief as the proceedings before the trial court were conducted under the CPC, in which the time limitation for filing an appeal against the decision of the subordinate Court when exercising its original jurisdiction under that law is ninety (90) days as provided under item 1 of Part II of the schedule to the LLA. See also the cases of **Mohamed Salimini Vs. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2019 (CAT-unreported) and **Twaha Said Massawe Theresa Damian (As Administratrix of the Estate of the late Hamis Rashid Mnunduma) and Another**, Civil Appeal No. 304 of 2021 (HC-unreported). In this matter as stated earlier on above the application was lodged in Court 67 days after delivery of the decision sought to be challenged, the period which no doubt was within the time limitation within which to lodge the appeal. Had it been the applicant was ignorant of that fact, I believe he would have filed his appeal timely as all the necessary documents were availed to him within time. Now should he be punished for his ignorance of the law under the circumstances? In my humble view the answer is no as

each case is decided on its own facts. The law under section 14(1) of the LLA provides that, application for extension of time can be brought either before or after expiry of time for preferring the appeal or application. In this matter though acting under ignorance of law of the time limitation in filing an appeal arising from the CPC, applicant brought his application for extension of time 23 days before expiry of 90 days provided by the law. By so doing he was supposed to state to the court the reasons that would have prevented him to file the appeal timely as the requisite documents were availed to him time, but none of them have been advanced. I would have refused to grant the application but for the interest of justice I refrain from so doing on the reason that, the applicant has also alleged the ground of illegality of the decision on the jurisdiction of the trial court to adjudicate the matter, which in itself is sufficient ground for extension of time. Though the 1st respondent has challenged it in his submission, justice dictates that, let parties be availed with an opportunity to be heard on that point of law. That said and done, I grant the application. The applicant has to file his intended appeal within 21 days from the date of this ruling.

Each party to bear its own costs.

Order accordingly.

Dated at Dar es Salaam this 28th day October 2022.



E. E. KAKOLAKI

JUDGE

28/10/2022.

The Ruling has been delivered at Dar es Salaam today 28th day of October, 2022 in the presence of Mr. Denis Malamba advocate for the 1st respondent who was also holding brief for advocate Edward Chuwa for the applicants and Ms. Asha Livanga, Court clerk and in the absence of the 2nd respondent.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

28/10/2022.

