

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 30 OF 2021

(Arising from Matrimonial Appeal No.5 of 2021 in the District Court of Kigoma,
Originating from Matrimonial Cause No. 5 of 2021 of Ujiji Primary Court).

DAMARI WATSON BIJINJA..... APPLICANT

VERSUS

INNOCENT SANGANO..... RESPONDENT

RULING

8th & 11th February 2022

F.K. MANYANDA, J

The applicant is seeking extension of time to appeal against the decision of the District Court in Matrimonial Appeal No. 5/2021. When the application was tabled before me for hearing, the Applicant was present in person and represented by Mr. Sylvester D. Sogomba learned Advocate whereas the respondent was as well present in person and represented by Mr. Sadiki Aliko learned Advocate.

Mr. Sogomba for the Applicant submitting on the application stated that the applicant is applying for extension of time so that she can appeal



against the decision of the District Court in Matrimonial Appeal No. 5/2021 through section 14(1) of the Law of Limitation Act, [CAP 89 R.E 2019].

Submitting in line with the Applicant's Affidavit, Mr. Sogomba argued that, before this Application there was an appeal No.5/2021 which was filed in time but it was dismissed on 12.11.2021 on technical legal ailments that it was titled Petition instead of Memorandum of appeal and it was an appeal challenging Primary Court Decision in the High Court directly hence the applicant filed this instant application on 24/11/2021 from 12/11/2021 to 24/11/2021 it is 11 days which he alleges were lost during the preparation of the application and filing the same.

Mr. Sogomba went on submitting that, the cause of delay is due to the striking out of his former appeal which was filed in time and that the delay is not inordinate. He referred to the case of **Vodacom (T) PLC vs Commissioner General (TRA)**, Civil Application No. 101/20 of 2021 at page 10. In that case the delay was of 12 days the court held that such delay was fine for appeal preparation and said that the position of everyday of delay previously used to be, has now changed that the time for preparation of the appeal is counted for.



The advocate argued further that a question of non-attaching the appeal judgment is not tenable because the application is not challenging the judgment but extension of time.

He finally said that if the defects are established then they have not shown any prejudice in case time is extended. He thus prayed for the application to be granted.

On the part of the respondent, Mr. Sadiki Aliko learned advocate argued that the application is without any merit because the applicant has not established sufficient cause for the court to extend the time.

According to him, he says; he is aware that extension of time is a discretion of the court, but the same has to be exercised judiciously. He referred to the case of **Elius Mwakalinga vs Domina Kagaruki and 5 others**, Civil Application No. 120/12 of 2018 at 9, where the test were listed.

Mr. Sadiki continued saying that, the applicant has argued that he delayed for the 12 days because he was preparing the appeal and referred the **Vodacom case (supra)** which is distinguishable because in that case at paragraph 2 of page 10 the delay was due to waiting of necessary documents.

In the current application the Applicant averred in paragraph 4 that he was supplied with a copy of the ruling on 17/11/2021 but she did not annex the copy of the letter and ruling as well; there was no delay of supply of appeal documents.

As to the issue of delay by 12 days spent in preparation of an application is not borne out in the affidavit, the same has no evidence support or proof.

In the **Vodacom's case (supra)** the affidavit bore the issue of delay. Therefore, the requirement of accounting for delay of each day as held in **Elius Mwakalinga's case (supra)** is still the current law.

Again, the respondent's advocate continued saying that; in paragraph 8 of the affidavit the appeal was struck out, but the same can't be a good cause, because the same was incompetent.

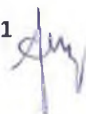
Moreover, the issue of prejudice to the Respondent Mr. Sadiki argues that it is a duty of the applicant to show by evidence that the respondent is not prejudiced. However, it is true that the respondent is affected because of the time and financial resources he is using is costing him. It was the respondent's submission that the applicant did not meet the criteria for extension of time. He prayed that the application be dismissed.

In his rejoinder Mr. Sogomba insisted that the time lost while the applicant was in court and the respondent has not shown how will he be affected if the application is granted.

Having considered the rival submissions by the counsel for the parties the only issue calling for my determination is whether the applicant has been able to advance good cause to warrant extension of time. It is a well-established principle of the law that, extension of time will only be granted upon showing good cause. Section 14(1) of the of the Law of Limitation Act Cap 89 R.E 2019 gives discretionary powers to the Court to extend time for sufficient reasons. Section 14 (1) says:-

"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."

The crucial issue in the instant case is whether the delay was with sufficient reason. The applicant's first ground of his delay to appeal in time contends that it was caused by technical legal ailment that the document of appeal she lodged to this court was titled petition instead of memorandum that led her appeal to be struck out. Also, the issue of challenging directly the decision and the findings of the



Primary Court. It is the applicant's averment that the 11 days delay was due to preparation and filing of the same and that the delay is not inordinate. The question is whether the reasons stated constitute sufficient cause to warrant extension of time. What amounts to sufficient cause has yet been defined but in the case of **William Malaba Butabutemi v. Republic**, MZA Criminal Application No. 5 of 2005, (unreported), the Court referred with approval the case of **CITIBANK (Tanzania) Ltd. v. TICI, TRA & Others**, Civil Application No. 6 of 2003 (unreported) where the Court took the stance that each case is to be looked at and considered on its own facts, merit and circumstances before arriving to a decision whether or not sufficient cause (now good cause) has been shown.

I am in agreement with Mr. Sadiki Aliko that, it is the trite principle that the applicant is supposed to show sufficient reasons upon which the court may consider in determining her application for extension of time as stated in the case of **Elius Mwakalinga (supra)** including;

- i. The length of the delay.*
- ii. The reasons for the delay;*
- iii. Whether there is an arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged; and*

- iv. *The degree of prejudice to the defendant if the application is granted.*

In **Elius Mwakalinga's case (supra)**, the Court of Appeal of Tanzania citing the case of **Bushiri Hassan vs. Latifa Lukio Mashayo** observed:

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

Together with the above cited case, in the circumstances, the applicant was required to account for each day of delay to the requirement of the law as from 12/11/2021 to 24/11/2021. See the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at Arusha, which set the guidelines for the factors to be considered by the Court in the exercise of its discretion to extend time or not.

The Court held at page 6 among others that;

"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, and not apathy negligence or sloppiness in the prosecution of the action that he intends to take."

In this matter it has been conceded that the Applicant filed her appeal in time, only that it was struck out on legal technical grounds; as explained above.

I must say right at the outset that this ground is a sufficient reason to warrant the application to be granted. It amounts to a technical delay which the Applicant was not to blame. Courts have held in cases without number that a technical delay is explicable and excusable.

There is a plethora of authorities such as **Fortunatus Masha vs William Shija and Another** [1997] TLR 154, **Salvand K. A. Rwegasira vs China Henan International Group Co. Ltd**, Civil Reference No. 18; of 2006 (unreported) **Zahara Katindi and Another vs Luma Swalehe and 9 others**, Civil Application, No. 4/05 of 2017, Yara Tanzania Limited vs D.B. Shapriya and Co. Ltd, Civil Application No. 498/16 of 2016, and **Samwel Kobelo Muhulo vs National Housing Corporation (NHC)**, Civil Application No. 302/17 of 2017

In William Shija's Case (supra) the court of Appeal stated as follows;

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical



delay in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the Applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted”.

The issue now is whether the Applicant acted immediately after the pronouncement of the ruling of the court striking out the first appeal.

As sworn in the affidavit and submitted by the Counsel for Applicant, the delay from the date of ruling delivery to the date of filing the instant application is of 12 days. The reason given for such a delay is due to time taken in preparation of the application. The Counsel for Respondent submitted that such reason is not valid because the applicant had all documents.

The position of the law is that sometimes depending on the circumstances of the case, time for preparation of documents to be filed has been considered to constitute valid reason for delay. In the case of **Vodacom Tanzania PLC vs. Commissioner for TRA (supra)**, the Court of Appeal citing its previous decided case of **Patrick Magologazi Mongella**



vs The Board of Trustees of the Public Service Pensions Fund,

Civil Application No. 1999/18 of 2018 stated as follows: -

*"From the foregoing, the underlying question is whether the 9 or even 10 days for the sake of argument are reasonable to prepare such an application and file. I am of the view that the said days are reasonable since they were spent preparing and filing the current application. This is in tandem with the decision of the single justice in **Patrick Magologozi Mongella (supra)** where 12 days were found to be reasonable in preparation and filing of the application for extension of time upon receipt of the necessary documents in pursuit of intended revision."*

In the instant application though the Applicant had all the documents as argued by the Counsel for the Respondent, still he needed time for preparing and filing the application in court. I find that the circumstances of this matter, the period of 12 days was reasonable for the Applicant to prepare the application.

Moreover, considering the 4th factor in **Elius Mwakalinga's case** (supra), I don't see how the respondent will suffer or be affected if the application is granted. In the interest of justice, I think it is prudent to grant extension of time to allow the matter to be decided by the court on merit. This is because the applicant has shown that she was busy and diligent in making a follow-up of her case.

I, therefore, allow this application and grant the applicant twenty-one days from the date of delivery of this ruling within which she has to lodge her intended appeal. No orders as to costs. It is so ordered.




F.K. MANYANDA

JUDGE

11/02/2022