

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF DODOMA)

AT DODOMA

MISC. CIVIL APPLICATION NO. 04 OF 2021

***(Originating from the ruling of the High Court of Tanzania at
Dodoma in Dc Civil Appeal No. 4/2019)***

SAMWE ITIEGHE.....APPLICANT

VERSUS

HASSAN IDD.....1st RESPONDENT

ABD HAMIS.....2nd RESPONDENT

RULING

Date of last order: 01/11/2022

Date of Ruling: 15/11/2022

Mambi, J.

This Ruling emanates from an application filed by the applicant. In his application supported by an Affidavit, the applicant prayed for this Court to extend time within which to file notice of appeal and an application for leave to appeal to the Court of Appeal of Tanzania out of time.

During hearing, both parties appeared unrepresented.

The applicant in his submission briefly submitted that he relies on his documents such as affidavit.

In response, the respondent briefly submitted that he is relying on counter affidavit.

I have considerably perused the application supported by an affidavit and the reply by the respondent which is counter affidavit. I have also keenly considered the submissions made by both parties to find out whether this application has merit or not. The main issue to be determined is whether the applicant has advanced sufficient reasons for this court to consider his application for an extension of time to file his appeal out of time. In other words, the question to be determined is whether the applicant has properly moved this court in his application and whether there are any good causes for his delay or not. It is trite law that any party who seeks for an extension of time to file an appeal or application out of time he is required to advance sufficient reasons in his affidavit before the court can consider and allow such application. This is the position of the law and case studies. In this regard, I wish to refer the decision of the Court of Appeal of Tanzania in ***REGIONAL MANAGER, TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)***. The court in this case observed that;

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

This means that in determining an application for extension of time, the court has to determine if the applicant has established some

material amounting sufficient cause or good cause as to why the sought application is to be granted. This means that the court need to consider an issue as to whether the applicants in their affidavit have disclosed good cause or sufficient reasons for delay. In other words, the court needs to take into account factors such as reasons for delay. That is where the applicant is expected to account for cause of delay of every day that passes beyond the aforesaid period, lengthy of the delay is to shown that such reasons were operated for all the period of delay.

in ***MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc. Commercial Cause No. 243 of 2015***

(Unreported) where it was held that:

"(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause..."

Reference can also be made to the decision of the court in ***BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI***; Civil Application No 176 of 2015 Court of Appeal of Tanzania at Dar es Salaam (Unreported) underscored that;

"Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

(a) The length of the delay

(b) The reason of the delay – whether the delay was caused or contributed by the dilatory conduct of the applicant?

*(c) Whether case such as whether there is a point of law or the **illegality** or otherwise of the decision sought to be challenged.”*

Looking at the application before this court, the applicant in his affidavit has clearly indicated that he had sufficient reasons based on the conman who disguised to be an advocate, the applicant having paid him in order to file the necessary documents for appeal to the Court of Appeal, the alleged lawyer did not do it. The applicant became aware of the failure when time had already lapsed. It is clear from the affidavit and other records that the applicant is a lay person. For a person of his standing, this Court is of the considered view that he could not have easily noticed that the person whom he instructed to file the necessary document for appeal was not a practicing lawyer. My perusal from the records especially affidavit and submission have revealed these reasons under paragraph 4, 5, 6, 7, 8 and 9 of the affidavit.

It also on the records that the applicant was not supplied with the records timeously. In my view, these were good causes and sufficient reasons for his delay. My perusal on the applicant's documents including his affidavit in line with their submission has found that the applicant has indicated reasonable or sufficient cause to enable this court to consider and grant his application.

Indeed, the question as to what it amounts to “sufficient cause” was underscored in **REGIONAL MANAGER TANROADS KAGERA VS**

RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007, where the court observed the following:-

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**"(emphasis supplied).*

Reference can also be made to the decision of Court of Appeal in **MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998** in which the court at **Page 425** held that

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the applicant" will not suffer any prejudice, an extension should be granted.

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid

explanation for delay; lack of diligence on the part of the applicant”.

The argument by the respondent that the applicant has failed to show sufficient reasons in his affidavit has no merit. I agree with the applicant that he has advanced and presented sufficient reasons for delay and the extent of such delay in his application.

It should also be noted the granting or refusing an extension of time is the discretion of court as per section 14 of the Law of Limitation Act Cap.89 [R.E. 2019]. Indeed this section provides that:-

*"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 such 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 (emphasis mine)".*

I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to lodge a notice of appeal and apply for leave to appeal to the Court of Appeal out of time.

The applicant shall file his application within 28 days from the date of this ruling.





A. J. MAMBI

JUDGE



15/11/2022

Ruling delivered in Chambers this 15th day of November, 2022 in presence of both parties.

A. J. MAMBI
JUDGE
15/11/2022

Right of appeal explained.

A. J. MAMBI
JUDGE
15/11/2022