

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. CIVIL APPLICATION NO. 39 OF 2022

SEMENI MAGAWA.....APPLICANT

VERSUS

MATONYA CHIDONG'ORESPONDENT

RULING

Date of Ruling: 07/11/2022

Mambi, J.

The applicant filed an application for extension of time to appeal out of time. In his application supported by affidavit the applicant prayed this Court to grant his application for him to appeal out of time.

The matter was ordered to proceed ex-parte due to non-appearance of the respondent. During hearing, the applicant who was represented by the learned Counsel Mr. Nchimbi who

briefly submitted that the applicant is seeking for an order for extension of time to appeal out of time relying on the reasons indicated in the applicant's affidavit. He argued that one of the reasons for delay is based on illegality and irregularities on the decision of the District Court as indicated under paragraph 10 of the affidavit.

I have considerably perused the application supported by an affidavit. I have also keenly considered the submissions made by the applicant's counsel to find out whether this application has merit or not. The main issue to be determined is whether the applicant has properly addressed this court in his application.

Having gone through the application by the applicant, I found the applicant properly filed his application for extension of time to appeal out of time. In my view what is at this court is just one prayer and this court will only issue one order if the applicant has advanced sufficient reasons for his delay.

In other words, the main legal 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”.

In other words, 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. The court needs to consider an issue as to whether the applicant in his affidavit has 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 be shown that such reasons were operated for all the period of delay.

I also wish to refer 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.”*

Worth also at this juncture referring the decision of the court 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...”

Looking at the application before this court, the applicant in his affidavit has clearly indicated that he had sufficient reasons based on illegality. It is clear from the affidavit and other records that the applicant has clearly stated that the District court decision was based in illegal decision.

My perusal from the records especially affidavit and submission have revealed that the applicant has established that there are sufficient reasons as indicated under paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of his affidavit.

Indeed, the question as to what it amounts to “sufficient cause” was underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD (supra)**, 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).*

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”.

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.



I agree with the applicant that he has advanced and presented sufficient reasons for delay and the extent of such delay in his application and he has also indicated that there is a point of

law on illegality involved. I also wish to refer the Law of Limitation Act. The relevant provision is section 14 (1) of the Law of Limitation Act Cap.89 [R.E. 2019] which provides as follows:-

*“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 appeal out of time.

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



A. J. MAMBI
JUDGE
7/11/2022

Ruling delivered in Chambers this 7th day of November, 2022
in presence of both parties.



A handwritten signature in black ink, appearing to be "A. J. Mambi".

A. J. MAMBI

JUDGE

7/11/2022

Right of appeal explained.

A handwritten signature in black ink, appearing to be "A. J. Mambi".



A. J. MAMBI

JUDGE

7/11/2022