

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MWANZA SUB-REGISTRY**  
**AT MWANZA**

**MISC. CIVIL APPLICATION No. 49 OF 2022**

(Arising from High Court Civil Appeal No. 43 of 2021 before Manyanda, J. Originated from Civil Case No. 43 of Ilemela District Court at Mwanza)

**FIKIRI KASOGA----- APPLICANT**

**VERSUS**

**AMANI KABAYU----- RESPONDENT**

**RULING**

*Last order: 13.12.2022*  
*Ruling date: 15.12.2022*

**M. MNYUKWA, J.**

The applicant filed this application by the way of chamber summons supported by an affidavit deponed by Fikiri Kasoga the applicant. The application before this Court emanates from the ruling of the High Court of Tanzania at Mwanza, Hon. Manyanda, J. The learned judge dismissed the PC Civil appeal No. 43 of 2021 for want of merit. The instant application is brought under Rule 11 of the Court of Appeal Rules 2009, Cap.141 [R.E 2019]. The applicant seeks before this court to extend time



so as to bring an application for certification on points of law as there are points of law in the decision of this Court in PC Civil Appeal No. 43 of 2021 which was dismissed.

At the hearing of the application, both parties appeared in person unrepresented. The applicant prays this court to adopt his affidavit to form part of his submission. He submitted that his prayer is for an extension of time to apply for certification on the point of law. He avers that, he delayed to file this application timely for the reason that his advocate did not inform him on the day the decision was delivered. He went on that after he was aware of the decision, he took time to find a lawyer and at the time he was not financially capable to hire an advocate. He also stated that he delayed to bring the application on certification of points of law because he is a layperson. He, therefore, prays this court to allow the application.

Responding, the respondent opposed the application. He claims that the applicant has no reasons for his delay for he was represented by an advocate and his claim that he was financially incapable is an afterthought. He insisted that the applicant acted negligently for the law has set a time limit to file the application. He went on to claim that the applicant's claim that he was not informed is not a justifiable reason for



he was out of the country but he accessed the information through Tanzlii and ignorance of the law is not a defence to the applicant. He, therefore, prays the application to be dismissed.

Re-joining briefly, the applicant insisted that he got the judgment in May that's why he delayed. He maintains his prayers that the application be granted.

Having gone through the applicant's application, the impugned Judgment sought to be challenged as well as the submissions of both parties, I noted that the respondent did not file a counter affidavit and therefore, he has a chance only to argue on matter of law and not on matter of fact. For that reason, it is only the respondent's points of law that will be considered in the determination of this application. The central issue for consideration and determination before me is whether the application is merited.

it is the settled position of the law that when it comes to granting an order for an extension of time to appeal, the court has the discretion to grant it but the discretion has to be exercised judiciously and normally based on the circumstance of each case on establishing that the delay was with a sufficient cause where the applicant is required to account for



every day of delay or else there was a point of illegality that impedes justice.

The applicant fronted reasons for his delay. First, he claims that he was not informed when the decision was delivered. Going to the records, the impugned decision was delivered on 14.03.2022 and on 23.03.2022 he filed a notice of appeal which he annexed in his application and was duly signed by the applicant. It is, therefore, his reason that he has no information about when the judgement was delivered contradicts the notice of appeal he filed 9 days after the decision was delivered.

Secondly, the applicant claims that he was financially incapable to engage a lawyer. It is settled that financial constraints is not a reason for an extension of time and it can only be relied on in very exceptional circumstances. As it has been held in a number of cases the court of Appeal in **Wambele Mtumwa Shahame vs Mohamed Hamis** Civil Reference No. 8 Of 2016 referred with authority the case of **Yusufu Same & Another vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002 where the Court stated: -

*"We are aware that financial constraint is not a sufficient ground for extension of time. See Zabitis Kawuka Ifs. Abdul, (EACA) Civil Appeal No. 18 of 1937."*



Thirdly, the applicant claimed that he delayed for reasons of ignorance that he is a layperson and he was to find a lawyer. The position of law is settled regarding the applicant's claim. Ignorance of the law is not an excuse and hence, cannot stand as a good cause for delay as it was also supported by the respondent. This position was stated in the case of **Hadija Adamu vs. Godbless Tumba**, Civil Application No. 14 of 2013 the Court of Appeal held that: -

*"As regards the applicant's apparent ignorance of law and its attendant rules of procedure, I wish to briefly observe that such ignorance has never been accepted as a sufficient reason or good cause for extension of time."*

(See also **Charles Machota Salugi vs. Republic**, Criminal Appeal No. 3 of 2011; **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No 10 of 2015.

Despite the reason stated, the applicant stands a legal duty to account for every day of delay. In the case of **Bushfire Hassan vs. Latina Lucia Masanya**, Civil Application No. 3 of 2007 when addressing the issue of delay the Court of Appeal held that: -

*"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules*



*prescribing periods within which certain steps have to be taken..."*

This stance was followed in a surfeit of decisions among them being the case of **Mustafa Mohamed Raze vs. Mehboob Hassanali Versi**, Civil Application No. 168 of 2014, **Wambele Mtumwa Shahame vs Mohamed Hamis**, and Civil Reference No. 8 of 2016.

Going to the records, the impugned judgment was delivered on 14.03.2022. that being the fact that the applicant is applying for certification on point of law, the instance of limitation is in accordance with Item 21 Part III of the First Schedule of the Law of Limitation Act, Cap.89 [R.E 2019]. Item 21 provides that:

*"Application under the Civil Procedure Code, Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law is 60 days."*

Based on the above provision of the law, the applicant time limitation started to run from 15.05.2022. in computation of the days, from 15.05.2022 to 30.05.2020, the applicant delayed for 15 days which he was required to account for in accordance of the principle stated in **Bushfire Hassan** (supra) that even a single day delay must be accounted for.



I am settled with the principle stated in the case of **Benedict Mumelo vs. Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held;

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

I therefore hold that the applicant did not give sufficient reasons nor does he account for every day of delay to move this court to exercise its unfettered discretion to extend time to file his application for the certification on point of Law as prayed. I, therefore, proceed to dismiss the application.

It is so ordered.



  
**M.MNYUKWA**  
**JUDGE**  
**15/12/2022**

**Court:** Ruling delivered on 15<sup>th</sup> December 2022 in the presence of both parties.

  
**M.MNYUKWA**  
**JUDGE**  
**15/12/2022**