

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

MISC. CIVIL APPLICATION NO. 104 OF 2022

(Originating from Civil Case No. 3 of 2018 of the District Court of Nyamagana)

TANZINDIA ASSURANCE COMPANY LIMITED.....APPLICANT

VERSUS

FARID AMOUR KHALFAN.....1ST RESPONDENT
OMBENI TIMOTHEO GEORGE.....2ND RESPONDENT
MANSOOR INDUSTRIES LTD.....3RD RESPONDENT

RULING

15th & 16th May, 2023

Kilekamajenga, J.

The applicant was ordered by the District Court in Civil case No. 3 of 2018, to pay a sum of Tshs. 84,960,000/= being the costs of repairing a bus with Registration Number T147 BNT and Tshs. 20,000,000/= being general damages. The claim was a result of road accident caused by the 2nd respondent who was driving a lorry owned by the 3rd respondent. The applicant is the insurance company that covered the liabilities of the 3rd respondent's lorry. Dissatisfied with the trial court's decision, the applicant appealed to this court via Civil Appeal Number 65 of 2021. However, the applicant's appeal was struck out of the mere reason that it was not accompanied with a copy of the decree. The applicant filed the instant application seeking an order to enlarge time to file the intended appeal after securing the decree.



The application was made under section 14(1) of the Law of Limitation Act, Cap. 89 RE 2019; section 95 of the Civil Procedure Code, Cap. 33 RE 2019 and any other enabling provisions of the law. The same was accompanied with an affidavit of Mr. Yusta Peter Kiruga, the erstwhile advocate of the applicant. When the matter came for hearing, the applicant was represented by the learned advocate, Mr. Geoffrey Karaka; the 1st respondent was represented by the learned advocate, Mr. Stephen Kaswahili; the 3rd respondent was represented by the learned advocate, Mr. Mutalemwa. The court ordered the matter to proceed in the absence of the 2nd respondent who was not secured during the trial of this case. In his oral submission, the learned advocate, Mr. Geoffrey Karaka adopted the affidavit accompanying the application which was sworn by Peter Kibuga. He further argued that, the delay in filing the appeal was due to technical reasons that amount to a technical delay. He accounted for the delay that, the initial appeal was filed in time i.e. on 28/12/2021 although it was struck out on 9/9/2022. Therefore, the time taken from filling the initial appeal to the time it was struck out amounts to the technical delay. He went further arguing that, the missing decree was secured on 19/9/2022. As the applicant still intends to challenge the trial court's decision, the instant application is pertinent.

In responding to the applicant's submission, the learned advocate for the 1st respondent objected the application. He adopted the second respondent's

counter affidavit and argued that, the applicant has failed to account for each day of delay. He further submitted that from 09/09/2022, when the initial appeal was struck out, to the filing of the instant application on 22/9/2022, there is a lapse of 13 days which have not been accounted. He argued further that, the applicant has failed to exhibit the letter requesting the ruling that struck out the initial appeal. In his opinion, the applicant failed to meet the principle of law alluded to in the case of **Elias Kahimba Tibendelana and Another v. Inspector General of Police and the Honourable Attorney General**, Civil Application No. 388/01 of 2020 CAT Dar es Salaam (unreported). Mr. Kaswahili further assailed the applicant's allegation that, there was a technical delay and termed the failure to attach the copy of decree in the initial appeal as negligence on the part of the applicant which should not be condoned by this court. He prayed for the application to be dismissed with costs.

Mr. Mutalemwa for the third respondent supported the submission from the counsel for the first 1st respondent. He pointed out that delay may be actual or technical. He objected the applicant's reliance on the doctrine of technical delay because the applicant failed to account for each day of delay. He further stated that, after the applicant was issued with the copy of decree on 19/9/2022, he filed this application on 22/9/2022 and thus there is a lapse of 2 days which the applicant has not accounted for, that amounts to an actual delay. He also

objected the allegation that, there is a possibility of success in the intended appeal. He stressed that, the applicant has failed to show sufficient cause for the delay and prayed the application to be dismissed albeit without costs.

When rejoining, Mr. Geoffrey Karaka did not raise any substantial argument rather than insisting that the applicant is determined to pursue his rights by way of an appeal.

After contentious arguments from both sides, the court has one issue to determine; whether this application has merit. The extension of time is the discretionary power of this court which must be exercised where the court is satisfied that the applicant has advanced sufficient cause. In the case of **Zawadi Msemakweli v. NMB PLC**, Civil Application No. 221/18/2018, the court of Appeal held that;

"I think it bears reciting that although the Court's power for extending time under rule 10 of the Rules is both broad and discretionary, it can only be exercised if good cause is shown."

I am aware, there is no clear definition of good cause or sufficient reason for extension of time. What constitutes good cause cannot therefore be laid down by hard and fast rule. The term good cause is a relative and may be determined

according to the circumstances of each case. See the case of **Valerie McGivern v. Salim Fakhrudin Dalal**, Civil Application No. 11 of 2015 (unreported); **Abdallah Salanga and 63 Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001 (unreported); **Citibank (Tanzania) Limited v. TTCL, TRA and Others**, Civil Application No. 97 of 2003 (unreported).

Also, before granting extension of time, the applicant must account for each day of delay. In the instant application, there is no doubt that there was a lapse of 13 days from the date when the initial appeal was struck out to the date of filing this application. Under the established principle of the law, such days must be accounted for. However, the counsel for the applicant stated that, after the strike out of the appeal, he requested for the copy of ruling which was belatedly issued. Two days after receiving the ruling, he filed the instant application. In my view, the counsel's explanation was sufficient to account for the delay. Furthermore, as long as the first appeal was filed in time and later struck out, the applicant should enjoy the benefits of the doctrine of technical delay. The applicant may not be condemned for negligence. See the case of **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassor**, Civil Application No. 342/01/2017 (unreported). In conclusion, I find the applicant was active in pursuing for his rights; the delay was occasioned by technical reasons beyond his capacity. I hereby grant the extension of time. The applicant

should file the appeal within 14 days from the date of this order. Costs should follow in the course. It is so ordered.

DATED at **Mwanza** this 16th day of May, 2023



Ntemi N. Kilekamajenga.
JUDGE
16/05/2023



Court:

Ruling delivered this 16th May 2023 in the presence of the counsel for the 1st respondent, Mr. Stephen Kaswahili. The applicant, the second and third respondent were all absent. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
16/05/2023



