

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 410 OF 2021

(Arising from the Judgement of the High Court in Civil Appeal No. 244 of 2020, Simfukwe, J,
dated 29/06/2021)

KITIMILA KHAMIS..... APPLICANT

VERSUS

EVA KIGELESO..... RESPONDENT

RULING

Date of last Order: 15/12/2021.

Date of Ruling: 18/02/2022.

E.E. KAKOLAKI, J

The applicant in this application is seeking an extension of time to apply for leave to appeal to the Court of Appeal against the judgment of this court (Simfukwe, J) dated 29/06/2021 in Civil Appeal No. 244 of 2020. The application which has been strenuously resisted by the respondent through her counter affidavit is preferred under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] referred herein as LLA and section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019] herein referred to as AJA,

supported by affidavit of the applicant. Hearing of the matter proceeded by way of written submission and both parties are represented. The applicant hired the services of Steven A. Msuya learned advocate while the respondent enjoyed legal aid from the Legal and Human Rights Center in preparation of the reply submissions.

Before I endeavour in determination of this application I wish to comment from the outset though not raised by the respondent this court noted that the applicant in moving the court invoked two different provisions of the law as mentioned above. However, I think that anomaly should not detain me much as it is not fatal since amongst the two enabling provisions he has cited the proper one which is section 11(1) of AJA. The said section reads:

*11.-(1) Subject to subsection (2), **the High Court** or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time** for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, **for making an application for leave to appeal** or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired. (Emphasis applied)*

Having satisfied that the court is properly moved now move to consider the merit or demerit of this application in which under the cited provision of the law the applicant is enjoined to account for the reasons that delayed him to lodge the application for leave to appeal to the Court of Appeal within time limitation described by the law. In doing so he has to account for each and every day of his delay or advance any other good cause warranting this court exercise its jurisdiction to grant the application. See the cases of **Bushfire Hassan Vs. Latina Lucia Masanya**, Civil Application No. 03 of 2007 (CAT-unreported), **Alman Investment Ltd Vs Printpack Tanzania and Others**; Civil Application No. 3 of 2003 (Unreported) and In **Republic Vs. Yona Kaponda and 9 Others** (1985) T.L.R 84. On the need to account for each day of delay the Court of Appeal in the case of **Bushfire Hassan** (supra) held thus:

"Delay, even a single day, has to be accounted for, otherwise there would be no meaning of having rules prescribing periods within which certain steps have to be taken..."

On other grounds constituting good cause the Court of Appeal in the case of **Jumanne Hassan Bilingi** (supra) observed that:

*"...what amounts to good cause is upon the discretion of the Court and it differs from case to case. But basically **various judicial pronouncements defined good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time.**"*

(Emphasis added).

As alluded to above the decision sought to be impugned by the applicant was handed down on 29/06/2021 and the application for leave to appeal ought to be filed within 30 days which lapsed on 28/07/2021. As this application was filed on 19/08/2021 the applicant is to account for 22 days. In a bid to account for the delayed 22 days, the applicant advanced two grounds of sickness and delay of the court in supplying him with the judgment and decree on appeal as deposed in the affidavit. Expounding them Mr. Msuya, for the applicant contended soon after delivery of the judgment the applicant on 08/07/2021 filed a Notice of Appeal together with the letter requesting for copies of judgment and decree which were issued to him on 11/08/2021 hence delay in filing this application. On the reason of sickness he argued in between 10/07/2021 and 24/07/2021 and 7 days later on he was sick relieved from duties while undergo treatments at Mnazi

Mmoja Hospital. It was his submission that the delay therefore was not deliberately resulted as it was out of his illness and prayed the court to find the applicant has advanced good cause.

In rebuttal the respondent argued the applicant has failed to account for the delay on each day as required by the law asserting that the delay resulted from his negligence. He said the copy of decree was ready for collection on 22/07/2021 and not 11/08/2021 as submitted by the applicant hence his failure to collect it timely resulted from his negligence. As regard to the claim of sickness he contended the applicant was lastly treated in Hospital on 24/07/2021 as per the attached medical chit hence his delay of almost a month is unjustifiable. He fortified his submission with the cases of **Wambele Mtumwa Shahame Vs. Mohamed Hamis**, Civil Reference No. 8 of 2016, (CAT-unreported) when referring to the case of **Bushfire Hassan** (supra) and **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Yong Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (CAT-unreported) and pressed the court to dismiss the application with costs. In his rejoinder submission Mr. Msuya almost reiterated his earlier submission while insisting the delay

was not deliberate. He invited the court to grant the application taking into account his then health status.

I have taken time to consider both parties submission as well as going through the affidavit, counter affidavit and the reply to counter affidavit. What is gleaned therefrom is that as per the medical chit there is no dispute that the applicant was undergoing treatment until 24/07/2021. As to the alleged added rest of 7 days thereafter that fact is not deposed in the applicant's affidavit nor is it supported by the annexed medical chit, hence that additional days of 7 days I hold does not count in the time accounted to. As to the decree on appeal which was extracted on 11/08/2021 I find no difficulties in holding that there is not contrary facts deposed by the respondent to contradict it, thus a finding that the applicant has managed to account for the delayed days until 11/08/2021 when he collected the said decree on appeal for leave application purposes. As to the remaining 8 days up to the time of filing this application on 19/08/2021 after collection of the said decree on appeal there is no explanation to account for. One may claim that this is a short period of delay. However, in my opinion the period though short ought to have been accounted for in which the applicant has failed to do as short period when not accounted for has never been sufficient ground

to condone the delay. This was the position in the case of **Paradise Holiday Resort Limited Vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018 (CAT-unreported) where the Court of Appeal observed that:

*"Admittedly, the delay involved in this matter is rather short. It is sometimes urged that the delay of a few days is very short and that itself is sufficient for condoning the delay. The fact that the delay is short is certainly one of the circumstances that will have to be taken into account in exercising the discretion to enlarge time. **Nonetheless, that does not mean that the fact the delay is short is by itself sufficient in all cases for condoning the delay.**"*
(Emphasis added).

In light of the above cited case which I fully subscribe to and considering the fact the applicant has failed to account for each day of delay of the said 8 days as adumbrated in the case of **Bushfire Hassan** (supra), I am satisfied that this application is devoid of merits and proceed to dismiss it as I hereby do.

I order the applicant to cover the respondent's costs in this application.

It is so ordered.

DATED at DAR ES SALAAM this 18th day of February, 2022.



E. E. KAKOLAKI

JUDGE

18/02/2022.

The Ruling has been delivered at Dar es Salaam today on 18th day of February, 2022 in the presence of the Respondent in person and Ms. Asha Livanga, Court clerk and in the absence of the Applicant.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

18/02/2022

