

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISCELLANEOUS CIVIL APPLICATION NO. 23 OF 2021

(Originating from District Court of Masasi in Civil Appeal Case No.24 of 2020)

MASUDI ARABI SAAMBILI.....APPLICANT

VERSUS

NANJOTA AMCOS.....RESPONDENT

RULING

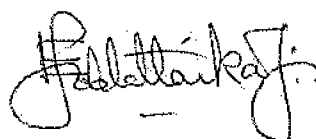
Date of Last Order: 22/2/2022

Date of Ruling: 22/2/2022

LALTAIKA, J.

This is an application for extension of time to lodge an appeal out time brought under section 14 (1) of the Law of Limitation Act, [Cap. 89 R.E. 2002] (now Revised Edition 2019). The application is supported by an affidavit of the applicant outlining the reasons for the application. The application has been vehemently resisted by the respondent vide a counter affidavit affirmed by one Mr. Stamili Mmole, Principal Officer of the Respondent.

When the matter came for hearing, the applicant appeared in person and unrepresented whereas the respondent enjoyed the services of Ms.

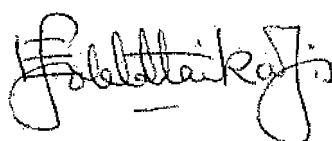


Kida Mwangesi, learned Counsel. Both parties conceded that the matter be disposed of by way of oral submissions.

In compliance, the applicant submitted that he had applied to appeal out of time because it is his right. He went further to submit that initially he had lodged his appeal on time in this court but Honourable Dyansobera, Judge informed him that he had made a mistake in numbering the trial court judgement. The applicant argued that this court ruled that way and advised him to refile it with correctly cited case information hence this application. The applicant avers that he had done so and thus, prays to be allowed to go on with the appeal.

In response, Ms. Mwangesi started by a recount of the background of the matter. The learned Counsel submitted that this application arises from an appeal to Masasi DC originating from Chiungutwa Primary Court. She submitted further that in the second appeal, the matter was struck out by this Honourable court for being incompetent because there was variation between records of the Primary Court and District Court. Ms. Mwangesi stressed that the matter was struck out on 24/6/2021 and the ruling is available in the court files and with parties.

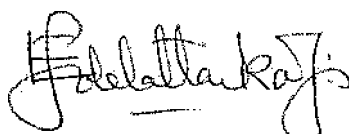
Having provided such a useful backdrop, the learned counsel turned her attention to the arguments advanced by the applicant. To that end



she prayed that the counter affidavit affirmed by Stamili Mmole be adopted and form part of her submission. Ms. Mwangesi opined that Section 14(1) of the Law of Limitations Act empowers this court to extend time to appeal out of time. However, the learned counsel contended, there are criteria to be fulfilled by the applicant.

Ms. Mwangesi submitted that the applicant had failed to account for each day of his delay and indicate an illegality or irregularity emphasizing that those are the grounds upon which this court is invited to take into consideration when exercising its discretionary power of extending time to appeal out of time prescribed by law.

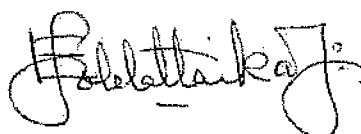
The learned Counsel contended that in his affidavit, the applicant has not provided any reason for his delay. Expounding on her point, Ms. Mwangesi submitted that with regards to the time from 24/6/2021 when the former application was struck out to 29/7/2021 when the applicant filed this application no attempt has been made to account for each day of the delay as required by law. To substantiate her argument, Ms. Mwangesi referred this court to the case of **Dar City Council vs S. Group Security Co. Ltd.**, Civil Application 234 of 2015 and that of **Lyamuya Construction Co. Ltd vs Board of Registered of Young**



Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4 (03 October 2011); (2010).

Referring to the applicant's affidavit, the learned counsel asserted that although the applicant's affidavit has indicated that there is illegality and that is why he is applying for this application it is trite law that illegality must be shown by the applicant to enable the court to ascertain it and must be evidenced on the face of records. To fortify her argument, Ms. Mwangesi referred this court to the case of **Zuberi Nasoro Mohamed vs Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No 93 of 2018. In conclusion, Ms. Mwangesi stressed that the applicant had failed to establish sufficient reasons hence prayed that this court dismisses the application with costs.

In a short rejoinder, the applicant conceded that the case started at Chiungutwa but was not satisfied with the decision rendered because the witnesses were contradicting against each other. He went further to assert that he then appealed to Masasi DC but the learned Advocate Ms. Mwangesi, was mostly absent. The applicant went on to assert that at the trial court, his case was assigned to a different magistrate without his knowledge and the court never explained the reason for such assignment.



The appellant went on to assert that such irregularity notwithstanding, his case was dismissed hence attempts to appeal to this court.

The appellant went on to submit that since he is not learned in law, he asked one Advocate Issa to assist him to prepare this application. It is the applicant's prayer that this court allows his application because, if the respondent had reasons to object his application she ought to have filed and served him a notice of the Preliminary Objection. He further stressed that if this was done, he would have consulted his lawyer to assist him in replying to the same. Finally, the applicant prayed this court to grant his application so that both parties could be heard.

Before I address the issue of whether the applicant has provided sufficient reason(s) for his delay to file his appeal I find it imperative to comment, albeit in passing, the applicant's assertion that the learned counsel ought to have filed a notice of preliminary objection and notify him accordingly. As a matter of procedural law obtained in our jurisdiction, what the learned counsel submitted did not require that she files a notice of preliminary objection as this is an application supported by applicant's affidavit. The learned counsel for the respondent was therefore, on the right track in resisting the same vide a counter affidavit. During the hearing the learned counsel contested the application and prayed the

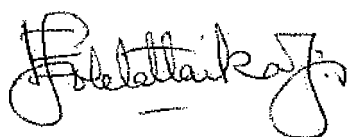


counter affidavit deposed by Mr. Stambili Mmole be adopted and form a part of her submission.

I now turn to the crux of this ruling. It is not disputed that the applicant filed PC. Civil Appeal No.24 of 2020 on time. However, his enthusiastic journey to pursue the appeal came across a roadblock when this court discovered that the appeal filed was against a non-existing decision. Needless to explain any further that, as a consequence, the appeal was struck out on 24/6/2021. The applicant was then advised to file a proper petition, hence this second bite.

In view of what the applicant deposed under paragraph 5 of his affidavit and what the parties submitted; it is quite clear that the delay is of two folds. The first limb of the delay is termed as a technical delay. This is the delay occasioned in spite of the fact that, as already hinted above, the applicant had brought his appeal before this court on time but in due course the appeal was found incompetent for a technicality. This delay is excusable in the eyes of law hence this court takes it as sufficient cause as averred by the applicant under paragraph 5 of his affidavit.

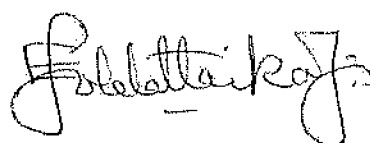
As for the second limb of the delay, countdown commences from the date of the ruling in PC Civil Appeal No.24 of 2020 to 29/7/2021 when this application was filed as evidenced by **Receipt No.**



EC1009920902991P and **Payment Control Number 991400472991**. That being the position, from 24/06/2021 to 29/07/2021 there are thirty-three days upon which the applicant needs to state the reasons for the delay and account for each day as correctly submitted by Ms. Mwangesi. I am aware of the principles as enunciated in the cases; **Dar City Council vs S. Group Security Co. Ltd.** (supra), **Lyamuya Construction Company Co. Ltd. vs Registered Trustees of Young Women's Christian Association of Tanzania** (supra) and **Zuberi Nasoro Mohamed vs Mkurugenzi Mkuu Shirika la Bandari Zanzibar** (supra).

I am inclined to comment albeit briefly also that, as per the submission of the applicant, it is clear that he is a layperson whose knowledge on legal issues, including technicalities is minimal compared to that of the learned counsel for the respondent. As submitted, the applicant sourced drafting services from one Advocate Mr. Issa whom, it appears, did not inform his client on the right time to bring this application.

The mere fact that the applicant reached out to a legal expert for assistance shows that he took the trouble to avoid any sign of negligence on his part. As repeatedly submitted during the hearing of this application, the intention of the applicant in seeking for extension of time to file his

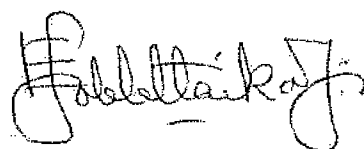


appeal out of time is to see that justice is done to both parties. I find that, in addition to the technical delay expounded on above, failure to account for each of the thirty-three days of delay to be incapable of preventing this court from allowing the application so that justice can be done to both parties.

Before I pen off, it is important to point out that section 14 (1) of the Law of Limitation Act gives this court discretionary powers to grant or not to grant extension of time to file an appeal out of time prescribed by law. This discretionary power is to be exercised judiciously and also sparingly in order to navigate through technicalities of the law while incorporating the Principle of Overriding Objective which requires courts to deal with cases justly, speedily and to have regard to substantive justice to ensure that justice is done without prejudice to either party.

For clarity the provision provides as follows: -

"14(1) Notwithstanding the provision of this Act, the court may, for any reasonable or sufficient cause, extend the period of time for the institution of an appeal or application or other than an application for the execution of a decree, and an application for such extension may be made by either before or after the expiry of the period of limitation prescribed for such appeal or application."



In view of the above, I do hereby grant extension of time to appeal out to the applicant within 14 days from the date of this ruling. Each party shall bear its own costs.

It is so ordered.



E. I. Laltaika

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Judge

22.02.2022

This ruling is delivered under my hand and the seal of this Court on this 22nd day of February, 2022 in the presence of the applicant in person and unrepresented and Ms. Kida Mwangesi, counsel for the respondent.



E. I. Laltaika

A handwritten signature in blue ink, appearing to read "E. I. Laltaika".

Judge

22.02.2022