IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. CIVIL APPLICATION NO. 02 OF 2022

(Arising from the High Court Juvenile Civil Appeal No. 1 of 2021 originating from the decision of Juvenile Court of Kigoma at Kigoma in Civil Application No. 5 of 2021)

KURUTHUM D/O MOSHI RASHIDI----------APPLICANT

VERSUS

AMOS WAMBURA SERIKALI----------RESPONDENT

RULING

28th March, 2022 & 20th April, 2022

F. K. MANYANDA, J

A delay of five (5) months and 17 days equal to 170 days has made the Applicant Kuruthum d/o Moshi Rashidi to come to this court seeking for extension of time within which to appeal. She is intending to appeal against a decision of the Juvenile Court of Kigoma which bemused her.

The impugned Ruling was delivered on 19/07/2021 and this application was filed on 04/01/2022.

The application is made by way of a chamber summons supported by an affidavit sworn by Ignatius. R. Kagashe, the Applicant's Counsel. The pleading and records of this matter indicate that the Applicant had sued the Respondent for maintenance of a child called Jennifer Amos aged about three (3) years be gotten by the duo in extra marital status the Juvenile Court found no merit in the application and dismissed the same.

Dissatisfied, the Applicant file an appeal to this Court but the same was struck out on legal defects, the Applicant still have the zeal to assail the said trial juvenile court ruling, hence she has come again, but since she is out of time, has to seek for extension of time.

At the hearing of this application which was by way of written submission the Applicant was represented by Mr. Ignatius R. Kagashe, learned Advocate, the Respondent enjoyed representation services of Mr. Daniel Lumenyela, learned Advocate.

Mr. Kagashe submitted in support of the application that the Applicant promptly filed in time without sleeping over her rights an appeal on 29/7/2021 to this court which was registered as Juvenile Civil Appeal No. 1 of 2021, the impugned decision was delivered on 19/7/2021. However,

it transpired the said appeal was defective for want of attachment of the impugned ruling or drawn order, hence was struck out.

The counsel argued that the Applicant could not manage to re-file the appeal in time hence this application. He stated the law in extension of time that it is a matter of discretion of the court and the same has to be exercised judiciously. He cited the case **Mumello vs BOT [2006] EACA 227**. That the Applicant must exhibit sufficient or good cause. He cited the case of **Administrator General vs Mwarabu Rajabu and others** [1980] TLR 303.

As to the tests for grant of extension of time the counsel cited the case of **Tanga Cement Company Limited vs Jumanne D. Masangwa and others,** Civil Application No. 6 of 2001 (unreported). He also cited the case of **Ngao Godwin Losero vs Julius Mwarabu,** Civil Application No. 10 of 2015 (unreported).

The counsel also argued that the delay was a result of human error which is excusable.

He cited the case of **Rashidi Abiki Nguwa and Another versus National Microfinance Bank PLC,**_Civil Application No. 431 of 2021 (unreported) where some human errors were considered excusable.

Lastly the counsel argued that the appeal raises issues of serious legal matters including rights of a child born out of wedlock which according to the counsel raise matters requiring extensive interpretation. He cited the case of the **Principal Secretary, Ministry of Defence and National Service vs Devran Valantia [1992] TLR 185 and Kalunga and Company Advocates vs National Bank of Commerce Ltd** [2006] TLR 235 where illegality and presence of serious legal points were considered as constituting sufficient cause for extending the time. He prayed the application to be granted.

On the other hand, the counsel for the Respondent who did not file any counter affidavit, therefore limiting himself to arguments on point of law not facts because he is taken to have admitted the contents of the affidavit.

The Counsel for the Respondent submitted arguing that the Applicant has failed to account for each day of delay from the date copies of this court.

He argued further that the said copies were supplied to the Applicant on 08/12/2021 and this application was filed on 17/01/2022, then 40 days had elapsed since Juvenile Appeal No. 01 of 2021 was struck out.

He cited the case of **FINCA (T) Ltd and another vs Boniface Mwalukisa**, Civil application No. 589/12 of 2019 where the court of appeal said delay even of single day has to be accounted.

As regard to illegality and seriousness of legal issues to be determined by this court the counsel argued that such illegalities are supposed to be on face of the record such as questions of jurisdiction not ones to be discovered by a drawn process or argument.

The Counsel also argued that the issue of human error was not borne out by the pleadings and since the Applicant was represented by learned mind, not been a layman the argument lacks basis.

Those were submissions by the counsel for both sides. I am thankful to both of them for they discharged their part with the same zeal and eloquent learned minds.

In this matter the main issues are whether the application is meritorious.

I am, in the first place, in agreement with the counsel for both sides on the position of law in matters of extension of time. As rightly argued extension of time is in the discretion of the court and such discretion has to be exercised judiciously that means with rules of reason and justice. See the case of **Mumello vs BOT [2006]** EACA 227

In order for this court to exercise its discretion, to extend the requested time the Applicant must show sufficient or good cause.

However so far, the term sufficient or good cause has not been defined the same have been taken to cover such issues of need to advance substantial justice when no negligence as in action or want of bona fides is imputable on the part of the Appellant. See the case of the **Registered Trustees of the Archdiocese of Dar es Salaam vs Chairman of Bunju Village and 11 others,** Civil Appeal No. 147 of 2006 (unreported) where the Court of Appeal stated as follows: -

> *"It is difficult to attempt to define the meaning of the word "sufficient cause" It is generally accepted however, that the words would receive liberal construction in order to advance substantial justice, when no negligence or in action or want of bona fides, is imputable to the appellant."*

The position expounded in the case above and decision in the cases cited by the counsel for both sides makes this court find that while an applicant is required to account for delay of each day, there are other conditions to be fulfilled which also may constitute sufficient cause such conditions are as spelt in the case of **Lyamuya Construction Company Limited vs Board of Trustees of Young Women Christian Association of**

Tanzania, Civil Application No 02 of 2010 (unreported) where the Court of Appeal stated the four condition as follows:-

> *"a) The applicant must account for all days of delay*
>
> *b) The delay should not be inordinate.*
>
> *c)The applicant must show diligence not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
>
> *d)If the Court feels that there are others reasons such as the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged"*

In this matter the applicant has explained that she acted immediately after delivery of the impugned ruling on 19/07/2021 and filed Juvenile Appeal No. 01 of 2021 well within the permitted time. However, the said appeal was struck out on legal technicalities she was out of time when she sought to refile the said appeal.

In my understanding of the law such a delay is what is termed as "technical delay" as opposed to "actual delay".

There is a definition in these terms as explained in the case of **Wiliam Shija and Another Vs Fortunatus Masha [1997]** TLR 1534 where the Court of Appeal stated as follows: -

> *"A distinction had to be drawn between cases involving real as actual delays and those such as the present one clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronunciation of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted."*

A question is whether the Applicant acted immediately after the pronouncement of the ruling in Juvenile Appeal No. 01 of 2021.

The Counsel for the Applicant argued that the Applicant did act immediately after the ruling by requesting to be supplied with the requisite ruling and drawn order of this court. However, the same was delayed, hence the delay. The Counsel for the respondent argued that there are 40 days of delay after the pronouncement of the ruling of this court on 03/12/2021.

The respondent's Counsel argued further that this application was filed on 17/01/2022 while the copies were supplied to the Applicant on 08/12/2021, hence making a delay 40 days.

However, my perusal of the records I found that the copies of the ruling and drawn order of this court in Juvenile Appeal No. 01 of 2021 were supplied on 08/12/2021.

This application was filed on 04/01/2022 not 17/01/2022. The filling fee was also paid on 04/01/2022. In circumstances, I think the Applicant acted promptly.

Technical delay has always held to be excusable, the rationale been that such a delay is not on the applicants blame. Courts have held in cases without number, to mention a few, **Salvand K-A Rwegasira vs China Henan International Group Co.Ltd** Civil reference No. 18 of 2006 **, Zahara Kitindi and another vs Luma Swalehe and 9 others,** civil application No. 498/16 of 2016, **Samwel Kobelo Muhulo vs National Housing Corperation**, Civil Application No. 302/17 of 2017 and the famous case of **William Shija** (supra).

In this case as explained above I am satisfied that the Applicant has established sufficient cause to enable this court exercise its discretion powers to grant the time sought by the Applicant.

In the upshot, for reasons stated above, I do hereby grant the application consequently I do hereby extend the time within which the Applicant is

to file her appeal by 30 days from the date of this ruling. Each party to bear its own costs. Order accordingly.

Sgd: F. K. Manyanda

Judge

20/4/2022