

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)**

AT MWANZA

MISC. CIVIL APPLICATION NO. 36 OF 2021

(Arising from decision of the District Court of Nyamagana, in Civil Appeal No. 13 of 2019 dated 21/09/2019 Delivered by, B. M. Lema.)

BETWEEN

**JOVIA CLEMENT..... APPLICANT
AND**

JUDITH EMMANUEL..... RESPONDENT

RULING

29th March and 06th May, 2022

Itemba, J.

This ruling is in respect of an application for extension of time for filing an appeal against the decision of the Nyamagana District Court, in appeal No. 13 of 2019. The District Court sustained an appeal preferred by the respondent, it ordered attachment of the house owned by the judgment debtor at Mkolani Nyegezi area so as to enforce the decree.

The application is preferred under the provisions of Section 25 (1) (b) of the Magistrate Court Act Cap 11 R.E 2019 and Rule 3 of The Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules G.N. No. 312 of 1964). It is supported by the applicant's own affidavit in which grounds on which extension of time is sought are set out.

The grounds advanced as the basis for this application are: **one**, failure by her counsel, to prosecute her case properly which led it to be struck out for not being properly before the High Court; and **two**, that her sister passed away on 7th March, 2021, where she attended her burial at Karagwe and she got sick upon returning.

The respondent has strongly opposed the application, she has attributed that it aims at wasting court's time. She urged this court to dismiss the application.

When the matter came up for hearing Mr. Jackson Ryoba, learned counsel represented the applicant, while the respondent Ms. Judith Emanuel was unrepresented, she fended for herself.

Submitting in support of the application, Mr. Ryoba argued that this matter is for extension of time to file an appeal out of time. He adopted the applicant's affidavit to form part of his submissions. Submitting on the reasons for delay he has informed this court that, the applicant had unsuccessfully filed an appeal which was within prescribed time to this court. The said appeal was truck out for being incompetent before the court, he argued that it is a legal principle that a party should be allowed to apply for extension of time. In supporting his averments, he cited the decision in the case of ***Sito Singh vs Henry Owange*** Masic. Land

application No. 26 of 2017 (Unreported), in which it was stated that when one applies for extension of time there must be a reason. He went on citing the decision in the case of ***Fortunatus Masha vs William Shija*** [1997] TLR 154. In this case it was stated; a party cannot institute a fresh cause if there is a technical delay, an appeal out of time has to be granted. In furthering his submissions, he also cited the decision in the case of ***Victor Binamungu vs Godfrey Kabala***, Civil Appeal No. 602 of 2017 (Unreported), at page 6 where it was stated that the applicant should not be blamed for technical delay as his initial application was struck out. He also cited the decision in the case of ***Yara Tanzania Ltd vs DB Shapriya & CO. Limited***, Civil Application No. 498/16 Of 2016 (Unreported). He concluded his submission that since the applicant had traveled to Karagwe and following her sibling demise she could not file the appeal in time.

In her rebuttal submission, the respondent avers that this matter was before Honorable **Mashauri, J**, but she is of the view that it was tainted with lies. The applicant brought tickets of the same motor vehicle of the same date that's why it was struck out.

She went on stating that the applicant is not involved anyhow in this matter but her alleged husband one Clement Kamahande. The applicant

just interfered at execution stage. Lastly, she urged this court to dismiss the application alleging that it aims at wasting court's time.

In her quick rejoinder, the applicant through her learned counsel insisted that the ground for striking out the appeal was the confusion caused by the applicant's advocate and not the forged tickets. She added that the respondent has not objected the application based on her arguments.

After going through both parties' submissions, the issue to be resolved by this court is whether this application has what it takes to have it granted.

It is settled law that an application for extension of time can be granted where the applicant presents a credible case to warrant grant of such extension. This means that a party asking for extension of time has a duty to justify the reasons for the extension.

The Court of Appeal of Tanzania outlined key conditions upon which grant of extension of time should be based, in the famous case of ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported). These conditions are:

"(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.

(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.”

It has also been emphasized, that in determining what constitutes sufficient cause regard has to be had to all circumstances of a particular case. See: ***Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Limited***, CAT-Civil Application No. 95 of 2007 (unreported).

Looking at parties' submissions, the applicant's prayer for extension of time is premised on two grounds. **One**, failure by her counsel, to prosecute her case properly which led it to be struck out for not being properly before the High Court; and **two**, the demise of her sibling and sickness caused the delay. The respondent has strongly opposed the application, contending that no sufficient cause has been adduced, and it aims at wasting court's time.

The legal position as correctly cited by the learned counsel for the applicant, is to the effect that where technical delay is pleaded as a ground, it is acceptable and it constitutes a sufficient cause for extension

of time when it is proved. This principle was stated in the decision of ***William Shija v. Fortunatus Masha*** [1997] TLR 154. In ***Amani Girls Home v. Isack Charles Kanela***, CAT-Civil Application No. 325/08 of 2019 (Mwanza – unreported), the Court of Appeal held that a diligent pursuit of the appeal through unsuccessful applications is a cause sufficient enough for grant of extension of time. In ***Victor Rweyemamu Binamungu v. Geoffrey Kabaka & Another***, CAT- Civil Application No. 602/08 of 2017 (Mwanza-unreported):

"Be it as it is, he first applied for revision which was however struck out on 4th December 2017 on account of time limit. This period from the date of the decision intended to be revised to the date of striking out Civil Application for revision No. 26 of 2017, is what has acquired the name of technical delay which cannot be blamed on the applicant."

The question which arises at this stage is whether technical delay as cited by the learned counsel for the applicant meets standards for extension of time.

Upon going through the records, the applicant had filed appeal No.13 of 2019 before the Court, which was in time as correctly stated by the learned counsel for the applicant. On 17th March, 2021 the said appeal was struck out for not being properly before the court and the reasons

given by the trial Judge was that, the confusion was done by the appellant's counsel now the (applicant). It is my considered view that, the applicant cannot be blamed for an act conducted by her counsel.

The current application was filed on 23rd April, 2021, which is to say it has delayed for 8 days from the date it was truck out. In light of **Lyamuya Construction Company Limited** (Supra), the delays should not be inordinate. Based on the circumstances of the matter at hand, I find that the applicant's delay by 8 days, though he has failed to account on each day as the law requires, not inordinate hence reasonable. **Rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts)** Rules, 1963, [G.N 312 of 1964] states that;

"An application for leave to appeal out of time to a district court from a decision or order of a primary court or to the High Court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall be in writing, shall set out the reasons why a petition of appeal was not or cannot be filed within thirty days after the date of the decision or order against which it is desired to appeal, and shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order:-

Provided that where the application is to a district court, the court may permit the applicant to state his reasons orally and shall record the same."


[Emphasis supplied].

Based on the above cited authorities and contention by both parties, I find that a technical delay as raised by the applicant's counsel is a reasonable ground to warrant this application. It is upon the above reasons that I allow the application. Leave is granted to the applicant to appeal to this Court against the decision of Nyamagana District Court in Civil Appeal No. 13 Of 2019. The appeal shall be lodged within thirty (30) days after delivery of this ruling. Costs to follow the event.

Right of appeal duly explained. It is so ordered.

DATED at **MWANZA** this 6th day of May, 2022.




L. J. ITEMBA
JUDGE
6.5.2022