

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

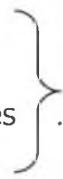
**IN THE DISTRICT REGISTRY OF MUSOMA  
AT MUSOMA**

**Misc. CIVIL APPLICATION No. 2 OF 2022**

*(Arising from the High Court (Musoma District Registry) in Civil Case No. 4 of 2020)*

**HEZRON HUDSON WINANI &  
SONY CHACHA WINANI**

[As joint administrators of the estates  
of the late Dr. Hudson Winani]



..... **APPLICANTS**

**Versus**

**NORTH MARA GOLD MINE ..... RESPONDENT**

**RULING**

08.03.2022 & 08.03.2022

**Mtulya, F.H., J.:**

In the present application the applicants are seeking enlargement of time to apply for setting aside of abatement of **Civil Case No. 4 of 2020** (the case) originated in this court and two other orders related to the case. The application was preferred under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019] (the Limitation Act) and Order XXII Rule 3 (1) & 9 (2) of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code).

The application was scheduled today afternoon for hearing and both sides invited the legal services of Mr. Juvenalis Motete and Mr. Faustine Malongo for the applicants and respondent respectively. After full submissions of materials in favour and against the

application, for nearly two hours, two gaps of delay were vivid on the part of the applicants: first, six days of delay, from the 4<sup>th</sup> day of January to the 10<sup>th</sup> day of January 2022, when the applicant's learned counsel, Mr. Motete, received a copy of the Ruling of this court on abatement in **Civil Case No. 4 of 2020** decided on the 14<sup>th</sup> day of December 2021 to the preparation of the documents; and second, two weeks of delay, from the 10<sup>th</sup> day of January 2022 to the 25<sup>th</sup> day of January 2022 when the learned counsel Mr. Motete drafted the application to when he had filed in this court.

In his opinion Mr. Motete contended that the initial six (6) days of delay are reasonable for grace period of learned counsels to prepare and file necessary documents in applications like the present one, whereas for the two weeks of delay, the learned mind stated that he had filed the same on the 10<sup>th</sup> day of January 2022, but science of filing cases in the Judiciary of Tanzania Filing Technology had failed him as the application was pending in the Filing System from the 10<sup>th</sup> day of January 2022 to the 25<sup>th</sup> day of January 2022, and that he had no control of the System.

This submission and reasons of the delay were protested by Mr. Malongo who stated that the learned advocate was unreasonable and negligent as he prepared an affidavit of two (2) pages detailed in ten (10) paragraphs for six (6) days, and in any case the Ruling of

this court in the **Civil Case No. 4 of 2020** was pronounced on the 14<sup>th</sup> day of December 2021 was served to the applicants on the 4<sup>th</sup> day of January 2022. Mr. Malongo argued further that Mr. Motete did not account on everyday of the delay as per law in the precedent of the Court of Appeal in **Dan O' Bambe IKO v. Public Service Social Security Fund & Another**, Civil Application No. 82 of 2005.

On the second delay, Mr. Malongo submitted that the applicants have not registered any evidence to substantiate the claim on the delay caused by science in the admission system of the Judiciary of Tanzania and in any case, the applicants had options of filing supplementary affidavit to show the faults in the delay was caused by the third party called science. According to Mr. Malongo, the affidavit may have been prepared by either the applicants themselves or Deputy Registrar of this court, or else an administrator of the system or alternatively court clerk. In his opinion, the stamp fixed in the application shows that the application was filed on the 25<sup>th</sup> day of January 2022 and court record must override the statements registered by Mr. Motete.

In order to bolster his argument, Mr. Malongo cited several decisions of the Court of Appeal on production of good cause to persuade this court in enlargement of time and accountability on each day of the delay (see: **Dan O' Bambe IKO v. Public Service**

**Social Security Fund & Another** (supra); **Oswald Masatu Mwizarubi v. Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010; and **Nyanza Cooperative Union (1984) v. M/S BP (T) Ltd & Two Others**, Civil Application No. 22 of 2008. Finally, Mr. Malongo cited the authority in **Baclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 arguing that it is unfortunate for the applicants to bring their application late in time, but the law knows no sympathy or equity.

I perused the practice of this court and the Court of Appeal on enlargement of time for applicants who have found themselves out of time to prefer matters in this court. The practice displays that for enlargement of time relevant materials must be produced by applicants to persuade this court in exercising its discretionary powers to decide in favour of the applicants (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009).

However, there are no pigeon holes on relevant materials established by our courts of record, the High Court and Court of

Appeal. That would have been easier for the courts to pinpoint the specific pigeon holes and determine applications brought before them (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 and **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd** (supra). I have read the decision in **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd** (supra), registered by Mr. Marongo, and found the following text at page 5 of the decision:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. The term **good cause** is a relative one and is dependent upon party seeking extension of time to provide the **relevant material** in order to move the court to exercise its discretion*

(Emphasis supplied).

The advice from our superior court in identifying relevant materials in an application for extension of time is to invite the general principle that every case has to be decided on its own peculiar facts. For instance, in the precedent of **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009, it was stated at page 7 of the typed Ruling that:

*It is now settled that **in its discretionary powers, apart from a point of illegality where raised**, the court has to also consider such factors as the length of delay, the reason*

*for delay, the degree of prejudice and **whether or not the applicant was diligent.** In applying those principles [the court must bear in mind]...the general principle that **every case is decided upon its peculiar facts***

(Emphasis supplied).

Words of the same species are found at page 6 in the precedent of **Lyamuya Construction Company Ltd v. The Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, which was cited by learned counsel Mr. Motete. However, the established test to persuade this court or Court of Appeal to decide in favour of applicants has been that applicants for enlargement of time must show that since becoming aware that they were out of time: *did they acted very expeditiously without displaying any gaps of delay.* In the precedent of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra), the Court of Appeal stated that:

*It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, **act very expeditiously***

(Emphasis supplied).

In the present application, the materials registered by Mr. Motete show that the applicants were not prompt when they

became aware that they were out of time. The applicants became aware that they are out of time since the Ruling of this court in **Civil Case No. 4 of 2020** on the 14<sup>th</sup> day of December 2021, but declined to register an application for extension of time arguing that they were waiting for a copy of the Ruling of this court. The copy of the ruling was served to them on the 4<sup>th</sup> of January 2022, still there are two gaps of the delay. The gaps of delay without plausible explanations are discouraged by our superior court and this court must follow the course. In the application of **Sebastian Ndaula v. Grace Rwamafa** (supra), the Court of Appeal stated that:

*The applicant has suggested in his supporting affidavit that he has all along been pursuing his case both in the High Court, and in this Court. But, on **a closer look, there are some gaps which the applicant has not accounted for***

(Emphasis supplied).

That is why this court and Court of Appeal have been in favour of accountability of every day of the delay (see: **Dan O' Bambe IKO v. Public Service Social Security Fund & Another** (supra); **Bariki Israel v. The Republic**, Criminal Application No. 4 of 2011 and **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007). In the present application there are vivid two gaps of delay which the applicants have not accounted for, both in their affidavit

and during submission of the arguments in favour of the application. I think, to my opinion, applicants for enlargement of time cannot file applications for extension of time as and when they wish. There is practice of the Court of Appeal in the statement (see: **Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Ref. 3 of 2014).

I understand Mr. Motete cited page 6 of the precedent in **Lyamuya Construction Company Ltd v. The Board of Trustees of Young Women's Christian Association of Tanzania** (supra). However the decision at page 6 Guidance Number (a) shows that applicants for enlargement of time must account for all the period of delay. In the present application, I declined to consider the law in **Items 12 & 16 of Part III in the Schedule to the Law of Limitation Act** [Cap. 89 R.E. 2002] as the applicants were well aware of the expiry of the deceased Dr. Hudson Winani since the 30<sup>th</sup> day of July 2021. Similarly, on the 14<sup>th</sup> day of December 2021, Mr. Motete was in this court when the Ruling in the case was delivered and declared **Civil Case No. 4 of 2020** abated since the 29<sup>th</sup> day of October 2021.

I am equally aware that Mr. Motete submitted that the six (6) days of delay in drafting necessary documents to file an application in the present suit were reasonable. However, the directives of the Court of Appeal is to account on every day of the delay, which is not reflected anywhere in the record of present application. In **Daphne**

**Parry v. Murray Alexander Carson** [1963] EA 546, the applicant was late for only five (5) days when he applied for extension of time, but the Court of Appeal for East Africa refused to grant the extension, despite the fact that the Court thought that the appeal had merit.

Similarly, in **Inspector Sadiki & Others v. Gerald Nkya** [1997] TLR 290, an application was made after one month and ten days caused by applicant's error, but the court declined to grant enlargement of time and in the same course in the **Transport Equipment Ltd v. D.P. Valambhia** [1993] TLR 91, the full court of the Court of Appeal refused to extend time within which to serve the respondent with a copy of the notice of appeal. The application in that reference was made six months after the omission became known, and at page 101, the Court stated that: *What is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time.*

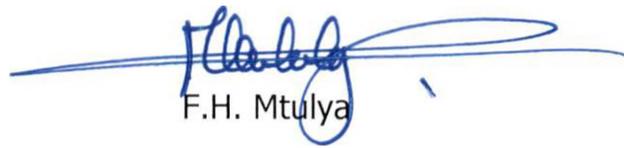
Having said so and considering the two gaps which the applicants have not accounted for, I have decided to dismiss the application without costs, as I hereby do. Each party shall bear its own costs. The reason in declining to order costs is obvious. The parties are joint administrators of the estates of the late Dr. Hudson

Winani, and were attempting to proceed in the case which was brought by the deceased in this court.



  
F. H. Mtulya  
**Judge**  
08.03.2022

This ruling was delivered in Chambers under the seal of this court in the presence of the applicants, Mr. Hezron Hudson Winani and Mr. Sony Chacha Winani, and their learned counsel Mr. Juvenalis Motete and in the presence of learned counsel Mr. Faustine Malongo for the respondent.

  
F.H. Mtulya  
**Judge**  
08.03.2022