

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISC. CIVIL APPLICATION NO. 04 OF 2022

(Emanating from the decision of the District Court of Mufindi in Civil Case No. 25 of 2017 and the order of this Court in Misc. Civil Application No. 13 of 2020.)

PETRO GODFREY..... APPLICANT

VERSUS

LEONARD MAHENDA (ALIAS QUIHAYA)..... RESPONDENT

RULING

Date of Last Order: 10/03/2022

Date of Ruling: 18/03/2022

MLYAMBINA, J.

The chamber application at hand has been made under *Section 93 of the Civil Procedure Code*¹ and *Section 14 (1) of the Law of Limitation Act*.² The Applicant mainly seeks for enlargement of the time that was ordered by this Court,³ so that the Applicant may lodge an appeal against the decision of the District Court of Mufindi.⁴ The order for extension was issued by this Court on 7th December, 2021. The Application is being supported with the affidavit of Dr. Ashery Fred

¹ Cap 33 [R.E. 2019].

² Cap 89 [R.E. 2019].

³ Petro Godfrey v. Leonard Mahenda (Alias Quihaya), Misc. Civil Application No. 13 of 2020, High Court of Tanzania, Iringa District Registry at Iringa (unreported).

⁴ Petro Godfrey v. Leonard Mahenda (Alias Quihaya), Civil Case No. 25 of 2017, District Court of Mufindi at Mufindi (unreportable).

Utamwa, the Counsel for the Applicant who also represented him before this Court⁵ and before the Mufindi District Court.⁶ The reasons advanced by the Applicant through the supporting affidavit are as follows:

First, on 29th May, 2018, the District Court of Mufindi decided against the Applicant herein.⁷ *Second*, on 7th December, 2021 the Applicant was granted leave by this Court to appeal within 14 days.⁸ *Third*, the Applicant immediately instructed Counsel Dr. Ashery Fred Utamwa to prepare the said appeal, unfortunately, he fell seriously sick and started receiving treatment at the Mafinga Town Hospital. *Fourth*, despite of being exempted from duty by the doctors for 6 weeks, he continued to feel worse due to the ongoing COVID influence and ongoing medications. *Fifth*, while preparing the intended appeal, the Applicant's Counsel discovered that the decree was wrongly dated, where it was dated 22nd June, 2018 instead of 29th May, 2018 as it appears in the judgement. *Sixth*, the Applicant's Counsel requested the Trial Court to rectify the said error and on 19th January, 2022 he received a letter informing him that the rectified decree is ready for collection, so he collected the same immediately and filed this application for enlargement of time. *Seventh*, on the face of records, the impugned decision is tainted with illegalities that need to be cured through the intended appeal.

⁵ Misc. Civil Application No. 13 of 2020, *loc cit.*

⁶ Civil Case No. 25 of 2017, *loc cit.*

⁷ *Ibid.*

⁸ Misc. Civil Application No. 13 of 2020 *loc cit.*

In opposition to the above reasons given in the supporting affidavit evidence and amplified in the written submissions, the Respondent filed a counter affidavit sworn by Moses Ambindwile, the Legal Counsel for the Respondent in this Application. He noted the second and third Applicant's reasons.

Counsel Ambindwile denied the fourth and fifth Applicant's reasons for being frivolous and vexations. He further stated that; the fact that Counsel Dr. Ashery Fred Utamwa was unable to proceed due to poor health is incorrect because he was on the position to proceed with the case through his fellow Advocate working in the same Firm. Furthermore, even after recovery from sickness, he failed to take action without any further delay.

The sixth and seventh Applicant's reasons were also denied by the Respondent's Counsel. The Respondent further averted that; it is the same Applicant who previously requested the Trial Court to rectify the decree to be dated 22nd June, 2018 in order the date to be the same. But when the judgement was certified, he is now saying 22nd May, 2018 is incorrect while he was the one who requested the date to be inserted 22nd June, 2018.

The Respondent went on to dispute the eighth reason advanced by the Applicant. He further stated that; the Applicant neither advanced any good reasons nor counted for each day of delay that warranties this Court to grant the enlargement of time. Hence, this Application deserves a dismissal order.

In view of the Respondent, from the above facts and circumstances of the application, the Applicant herein has made dereliction of his duty

and cannot circumvent the liability imposed by law with the invalid and insufficient reasons put forth by the Applicant in support of his application. Thus, the Applicant was required to advance good cause as to why he failed to lodge his intended application for appeal in time after being granted time by this Court to lodge within 14 days. Hence, in order to render justice, in view of the Respondent, this application deserves a dismissal order with costs.

In considering all of the afore affidavit evidence as elaborated by the parties in their written submissions, first, I don't agree with the Respondent that the sixth reason advanced by the Applicant is meritless. The records clearly show that the Applicant requested the Trial Court to rectify the decree to be dated 29nd May, 2018 instead of 22nd June, 2018 through his letter dated 19th December, 2021. There are three reasons as to why the Respondent argument is invalid. *First*, the original record shows that the judgement is dated 29nd May, 2018. As such, the decree thereof should tally. *Second*, in response to the Applicant's letter, the Mufindi District Court through its letter dated 18th January, 2022, of which is attached to the counter affidavit in this application, correctly noted the typo error, as it stated:

We have rectified the typographical error in the decree above captioned, where the date of the decree now read 29th May, 2018 instead of 22nd June, 2018.

Third, it is not true the same Applicant previously requested the Trial Court to rectify the decree to be dated 22nd June, 2018 and he is now saying 22nd May, 2018. The Applicant's supporting affidavit in this application is very clear on the date. He discovered that the decree

was wrongly dated, 22nd June, 2018 instead of 29th May, 2018 as it appears in the judgement.

In any event, the fundamental issue warranting determination is; *whether the Applicant has advanced sufficient reasons and accounted each day of delay for the Court to grant this application.* The later was the position of the Court of Appeal in the *inter alia* case of **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu Shirika la Bandari Zanzibar**.⁹ It was the same position in *inter alia* case of **Airtel Tanzania Limited v. Misterlight Electrical Instalation Company Limited and Arnord Mulashani**.¹⁰ In the case of **Ramadhani J. Kihwani v. TAZARA**, Mwambegele J.A maintained the same position that:¹¹

Even a delay of a single day has to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps have to be taken.

In the daily cited case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, the Court issued the following guidelines for granting an application for extension of time:¹²

a) Whether, the applicant accounted for all period of delay?

⁹ Court of Appeal of Tanzania at Zanzibar, Civil Application No. 93/15 of 2018 (unreported).

¹⁰ Civil Application No 37/01 of 2020 at p. 11 (unreported).

¹¹ Civil Application No 401/18 of 2018 Court of Appeal at Dar es Salaam at p. 9 (unreported).

¹² Civil Application No. 2 of 2010, Court of Appeal of Tanzania at Dar es Salaam (unreported).

- b) *Whether the delay is ordinate?*
- c) *Whether the applicant acted diligently and not negligently or sloppiness in the prosecution of the case that he intends to take?*
- d) *Whether, there was any illegality of the decision sought to be challenged?*

The afore guidelines have been cited with approval and applied by the Court in numerous decisions. In the case of **Mobrama Gold Corporation Ltd v. Minerals and Others**, it was ruled that:¹³

It is generally inappropriate to deny a party an extension of time. Where such denial will stifle his case as the respondent delay does not constitute a cause of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, an extension should be granted.

In any case, extension of time is the judicial discretion of the Court which has to be invoked if there are sufficient cause.¹⁴ In the *inter alia* case of **Allison Xerox Silla v. Tanzania Habours Authority**,¹⁵ as quoted in the case of **AG v. Masumin and Another**, it was stated *inter alia* that:¹⁶

¹³ [1998] TLR 425.

¹⁴ Republic v. Yohana Kaponda and 9 Others [1985] TLR 84 as cited in the case of Ihembe Industries Co. Limited v. Tanzania Electrical Mechanical and Electronics Services Agency (TEMESA) p. 2 (unreported).

¹⁵ Civil Reference No. 14 of 1998 Court of Appeal of Tanzania at Dar es Salaam (unreported).

¹⁶ Misc. Civil Application No. 11/2015 High Court Dar es Salaam, p. 9 (unreported).

...where an extension of time is sought consequent to a delay the cardinal question is whether sufficient reason is shown for the delay; other considerations such as the merit of the intended appeal would come in after the applicant has satisfied the court that the delay was for sufficient cause.

The settled law requires this court to exercise its discretion powers to extend time where there are some materials. This was stated in the case of **Godwin Ndewasi Karoli Ishengoma v. Tanzania Audit Corporation** where the Court held that:¹⁷

The rules of court must prima facie be obeyed and in order to justify extending time during which some step in the procedure requires to be taken there must be some material on which the court can exercise its discretion...

The **case of Ishengoma**¹⁸ was cited with approval in the case of **Ratnam v. Cumarasamy and Another**.¹⁹ In the latter case, it was held that:

The rules of court must prima facie be obeyed and, in order to justify a court in extending time during which some step in procedure requires to be taken there must be some material on which the Court can exercise its discretion. If the law were otherwise any party in breach would have an unqualified right to extension of time which would defeat

¹⁷ [1995] TLR 200.

¹⁸ *Ibid.*

¹⁹ [1964] 3 All ER 933.

the purpose of the rules which is to provide a timetable for the conduct of litigation.

The affidavit factual evidence of the application at hand are very clear: *First*, the order of this Court dated 7th day of December, 2021 gave the Applicant 14 days enlargement of the time from the day he was issued with the copy of decision. *Second*, Annexure PG3 to the supporting affidavit along with the Applicant's fourth reason reveal that Dr. Ashery Fred Utamwa was advised by the Medical Officer In-charge of Mafinga Council Hospital to rest at home for six weeks until 30th December, 2021 due to various physical problems. *Third*, while preparing the intended appeal, the Applicant's Counsel discovered the defect on wrong date of the decree. *Fourth*, the Mufindi District Court through its letter dated 18th January, 2022 informed the Applicant that the corrected and certified copy of decree was ready for collection. *Fifth*, as per the seventh reason in support of the application, the Applicant received the copy of rectified decree on 19th January, 2022. That means, it was just a day after the same was rectified by the Trial Court. *Sixth*, this application was immediately filed on 21st January, 2022.

The above evidential facts solely concretize two points. *First*, the Applicant should not be blamed for the delay occasioned by the Trial Court for been issued with a defective decree, the point which applies sequel with been issued late with the copy of judgement or ruling. In the case of **Hans Poul Automats Limited v. RSA Limited**, the

Court of Appeal of Tanzania while confronted with the point of delay by the Court to issue a copy of ruling, held that:²⁰

The applicant should not be condemned for the delay by the court to supply him with the copy of ruling. Similarly, in this case I am satisfied that the applicant is not to blame since he has shown that the High Court Registry contributed to the delay.

Second, the Applicant acted reasonably and diligently in taking essential steps after obtaining the rectified copy of decree on 19th January, 2022 by prompting filing this application on 21st January, 2022. In the case of **Michael Lesani Kweka v. John Eliafye**, the Court solidified on the condition of acting promptly before one is granted with leave for extension of time. The Court held that:²¹

Extension of time may be granted where party putting forward such plea has shown to have acted reasonably diligently to discover omission and upon such discovery, he acted promptly to seek remedy for it.

The Respondent has challenged this application contending that the Applicant did not account for each day of delay. However, the records speak voluminous. The Applicant did account for each day of delay through the reasons advanced in his supporting affidavit. The Applicant requested the correct copy of decree on time, faced sickness and upon

²⁰ Civil Application No. 126 of 2018, Court of Appeal of Tanzania at Arusha, p. 9 (unreported).

²¹ [1997] TLR 152.

been supplied with the correct copy of decree, immediately filed this application.

On the point of illegality, I noted in the ruling dated 7th December, 2021, though it is a good point for extension, it is subject of diligence. Indeed, the point of illegality has been amplified by the Court of Appeal in dozens of cases including the cases of **Mrs. Mary Kahama (Attorney of Georgia George Kahama) and Another v. H. A. M Import & Export (T) Limited and 2 Others;**²² **Mrs. Rafikihawa Mohamed Sadik v. Ahmed Mabrouk and 2 Others;**²³ **The Registered Trustees of Shadhily v. Muhfudh Salim Omary Bin Zagar (Administrator of the Estate of the Late Salim Omary);**²⁴ **Principal Secretary, Ministry of Defence and National Service v. Duram P. Valambhia.**²⁵

In the present application, as noted earlier, the Applicant acted diligently. Soon after been supplied with the correct copy of decree on 19th January, 2022, he prepared this application and lodged it on 21st, January, 2022. There is no any sloppiness, inaction or drowsy act on the party of the Applicant. It will therefore be unfair to punish the Applicant for the error committed by the trial Court.

²² Application No. 52 of 2017, Court of Appeal of Tanzania at Dar es Salaam at p. 10 (unreported).

²³ Civil Application No.179/01 of 2018 Court of Appeal of Tanzania at Dar es Salaam at p. 16 (unreported).

²⁴ Civil Application No. 512/01 of 2018, Court of Appeal of Tanzania at Dar es Salaam (unreported).

²⁵ [1992] TLR 182.

In the end result, the application is hereby granted. The Applicant is given seven (7) days to file his intended appeal. costs be shared. Order accordingly.



Y.J. MLYAMBINA
JUDGE

18/03/2022

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Ruling pronounced and dated 18th March, 2022 in the presence learned Counsel Dr. Ashery Fred Utamwa for the Applicant and in the presence of Counsel Theresia Charles for the Respondent. Right of Appeal fully explained.



Y.J. MLYAMBINA
JUDGE

18/03/2022

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