

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 4 OF 2022

(Arising from Kigoma District Court Civil Appeal No. 68 of 2003, Originating from Ujiji Primary Court Civil Case No. 54 of 2002).

UGUMBA ZAIDI..... APPLICANT

VERSUS

JUMA MAGONGO.....RESPONDENT

EX PARTE RULING

07th & 25th March 2022

F.K. MANYANDA, J

The applicant herein Ugumba Zaidi is seeking extension of time within which to appeal to this Court out of the prescribed time. The application is made under section 14(1) of the Law of Limitation Act [Cap 89 R. E. 2019], Order XLIII Rule 2 and Section 95 of the Civil Procedure Code [Cap 33 R.E 2019] hereafter referred to as "The CPC."

The hearing of this application was ordered to proceed in absence of the Respondent because it was proved that the Applicant served the



Respondent through a court process server but he refused to accept service. Upon reading the affidavit of service sworn on 03/03/2022 by Dickson P. Honya who took oath before Eva B. Mushi, Resident Magistrate, the Respondent refused service on 01/03/2022.

From the above reason, the court found it expedient to grant the prayer for ex-parte hearing.

At the hearing of this application, the Applicant was present in person unrepresented. Reiterating the contents of his affidavit, the applicant submitted that he prays the court to grant his application in order to file the appeal out of the prescribed time.

Before dealing with this application, let me summarily narrate the brief back ground of the case. The Respondent herein sued the Applicant in Ujiji Primary court in Land case No.54/2002 where the court decided that the disputed land be possessed by the Applicant whereas the houses built thereon be for Respondent respectively.

The Respondent being aggrieved by such decision appealed to the District Court vide Civil Appeal No. 68 of 2003 whose decision was in his favour giving him possession of the disputed land together with the houses therein.

The Applicant thereafter preferred an Appeal to the High Court at Tabora challenging the decision of the District Court via PC. Civil Appeal No. 42 of 2005 which was there soon withdrawn for the agreement to settle it amicably in the family. Failure to settle the same has merged to this application in which the applicant after having found himself out of time has brought this application to seek this court to extend time in order to appeal out of time.

From the evidential facts averred in the affidavit, it is not in dispute that PC. Civil Appeal No. 42 of 2005 was not determined on merit, it was withdrawn upon agreement to go back to the family for settlement.

Confused, the Applicant came to this Court seeking for extension of time within which to appeal against the decision of the District Court which was withdrawn upon agreement to settle it amicably. The next question is whether this application is tenable.

My understanding concerning the withdrawing of the case without the wording "with leave to refile" means that case came to an end.

In line with the above provision, the records show that the Applicant consciously on 11/9/2009 himself prayed to withdraw his PC. Civil Appeal No 42/2005 before the High Court of Tanzania at Tabora with no leave to



refile. His prayer was granted and the matter was finally withdrawn with no leave to refile. These are his wordings;

"We have discussed this case within the family. We have been advised to go back to the family for settlement. I pray to withdraw this appeal."

Equally, this court, by Hon Justice L. K. N. Kaduri in PC. Civil Appeal No.42 of 2005 gave the order that,

"Upon application by the appellant to withdraw the appeal, it is ordered that this appeal be marked withdrawn."

From the wording above, it is overt that, the applicant did not pray for the leave to refile. The act of not seeking for leave to refile it means that the applicant has to account for each day of delay as from 06/05/2005 when the impugned decision was given to 07/02/2022 when this application was filled which is almost 17 years passed.

The only issue calling for my determination is whether the applicant has been able to advance good cause to warrant extension of time. It is a well-established principle of the law that, extension of time will only be granted upon showing good cause. Section 14(1) of the of the Law of Limitation Act Cap 89 R.E 2019 gives discretionary powers to the Court to extend time for sufficient reasons.

Section 14 (1) provides:-

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

The crucial issue in the instant case is whether the delay was with sufficient reason. The applicant's main raised ground of his delay to appeal in time contends that it was caused by the respondent who has resisted to settle thus settlement has not reached.

The applicant decided to apply for extension of time to file the appeal although had no leave to refile. Since the Applicant withdrew his case without leave to refile it means that there is no any appeal in any court. Therefore, the law requires the Applicant to count the days of delay from the date when the impugned judgment was delivered.

The question is whether the above reason stated constitutes sufficient cause to warrant extension of time. What amounts to sufficient cause has yet been defined in the case of **William Malaba Butabutemi v. Republic**, MZA Criminal Application No. 5 of 2005, (unreported), the

Court referred with approval the case of **CITIBANK (Tanzania) Ltd. v. TICI, TRA & Others**, Civil Application No. 6 of 2003 (unreported) where the Court took the stance that each case is to be looked at and considered on its own facts, merit and circumstances before arriving to a decision whether or not sufficient cause (now good cause) has been shown.

On top of that, it is also trite principle of law that the applicant is supposed to show sufficient reasons upon which the court may consider in determining his application for extension of time as stated in the case of **Elius Mwakalinga vs Domina Kagaruki and 5 others**, Civil Application No. 120/12 of 2018 including;

- i. *The length of the delay.*
- ii. *The reasons for the delay;*
- iii. *Whether there is an arguable case such as whether there is a point of law on the Illegality or otherwise of the decision sought to be challenged; and*
- iv. *The degree of prejudice to the defendant if the application is granted.*

Together with the above cited case, in the circumstances, the applicant was required to account for each day of delay to the requirement of the law as from 03/05/2005 to 07/02/2022. See the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application

No. 2 of 2010 CAT at Arusha, which set the guidelines for the factors to be considered by the Court in the exercise of its discretion to extend time or not. The Court held at page 6 among others that;

"the following guidelines may be formulated: - (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 that he intends to take."

In this matter it has been conceded that the Applicant filed his appeal on 07/02/2022 as explained above the time lapsed is almost 17 years counting from 03/05/2005. The Applicant has not advanced good reasons as to what prevented him to appeal in time.

Another factor to consider in extension of time is, that the delay should not be inordinate. 17 years is very inordinate delay to be considered for someone to appeal against the impugned judgment. Here again, I rule out that Applicant has totally failed to convince this court on why should he be granted extension of time. According to me, the Applicant's action is an afterthought.

Additional issue to determine is whether the Applicant is the degree of prejudice to the defendant if the application is granted as stated in the

case of **Elius Mwakalinga** *supra*. Looking into the circumstance and evidence of this case, it is clear that almost 17 years have passed without the Applicant's initiatives to prosecute his case. The respondent has enjoyed the benefits of the disputed property for such a long time without any disturbances. How comes that he should now be disturbed? Dragging him back to the same litigation at this juncture is to make endless litigation. Although the Applicant has raised a ground that, the Respondent has resisted settlement, yet he didn't see the importance by acting immediately after such failure, considering the time limitation. Before I pen off I advise the parties to continue with settling amicably at their family level. I say so because the act of the Respondents refusing to cooperate after withdrawal of the appeal in 2005 is a betrayal by the Respondent to the Applicant. It is uncivilized, unbecoming and uncouth act which is unacceptable before the Almighty God. The Respondent should behave as a man of fear of God. Let the parties rethink and sit down again to settle their dispute.

I therefore, find that this application has been brought not only without sufficient cause but also without any cause. I accordingly dismiss it. Since the Respondent is absent and has not filed any document in opposition to this application, I grant no costs to either party.

It is so ordered.



F. K. MANYANDA

JUDGE

25/03/2022

