

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. CIVIL APPLICATION No. 136 OF 2021

(Arising from the High Court PC Civil Appeal No.57 of 2020)

ONESMO OSCAR ----- APPLICANT

VERSUS

MKURUGENZI MKUU NYEHUNGE EXPRESS ----- RESPONDENT

RULING

Last Order date: 07.03.2022

Ruling Date: 28.03.2022

M. MNYUKWA, J.

By way of chamber summons, the applicant applied to this Court for an order of extension of time to file bill of cost. The application is preferred to this Court under section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019. The application was supported by the affidavit sworn in by the applicant, Onesmo Oscar.

According to the records, the facts of the application is briefly that, the applicant was a plaintiff in Civil Case No. 125 of 2019 at Mwanza Urban Primary Court and respondent at Civil Appeal No 48 of 2019 before



Nyamagana District Court. Dissatisfied with the decision of Nyamagana District Court as the appeal was partly allowed, the applicant appealed before the High Court in PC Civil Appeal No 57 of 2020 in which the judgement was pronounced in his favour on 15/09/2020.

After the judgement of the High Court, the respondent showed an intention to appeal as on 8/3/2020, he served the applicant with the Notice of Appeal to the Court of Appeal of Tanzania. On 03/11/2020 the respondent filed Misc. Application No 154 of 2020 seeking an extension of time to file an application for certification on point of law to the Court of Appeal. The said application was dismissed on 10/05/2021 for non-appearance. It is from there when the applicant alleges to have realized that, the respondent was playing delayed tactics to prevent him from filing a bill of cost and therefore brought this application since the time of filling the application for bill of cost has already expired.

The matter was argued orally where the applicant appeared in person, unrepresented and the respondent managed the services of Mr. Julius Mushobozi, learned advocate.

Submitting on the application, the applicant avers that he brought this application following the decision of this Court in PC Civil Appeal No 57 of 2020 which awarded him costs of the suit. That, he had failed to file



an application for a bill of costs since there was a pending application of an extension of time to file an application on a certification of point of law to this court by the respondent. He went on that the said application was dismissed for non-appearance and there were no efforts shown by the respondent to bring new application. From there, he realized that the respondent was playing a delay tactics to prevent him from filing an application for execution and an application for bill of costs.

Responding to the submissions, Mr. Julius Mushobozi learned advocate prayed to adopt his counter affidavit to form part of his submissions and objected to the applicant's application for the reasons that the applicant did not show sufficient reasons for his delay into his affidavit as well as his submissions. He added that the applicant did not account for each day of delay and for that reason this court had the discretion to refuse his application.

The respondent counsel submitted that, the applicant did not show he intended to file bill of costs of which court. He went on to state that, if he decided to file the bill of costs following the decision of this court in PC Civil Appeal No 57 of 2020 in which the respondent filed an application for extension of time on 3/11/2020 it was almost 47 days later while the



applicant was supposed to file his application within 45 days from the date of decision.

The counsel for respondent went further to state that, the applicant did not account for each day of delay from the date when the respondent's application for extension of time was dismissed on 10/5/2021 to the date which he brought the present application on 7/10/2021, which is almost five months and three days.

He retires his submission by stating that, the applicant failed to show good cause for delay and he did not account for each day of delay. He added that, during all that time the applicant was represented and therefore cannot plead the defence of the ignorance of law. Also, the steps taken by the respondent to the Court of Appeal does not bar him to file application of execution as per the Rule 11(2)(b) of the Tanzania Court of Appeal Rules, 2019. For those reasons, he prayed the application to be dismissed with costs.

Rejoining, the applicant submitted that he was served with the notice of appeal on 8/10/2020 and for him that was a signal that the respondent had the intention to appeal, therefore it was prudent for him to give time to the respondent to pay before filling an application for execution. That's mark the end of both submissions.



After going through the affidavit of both parties and their submissions, the only issue for consideration and determination is whether the applicant had shown a good cause for delay and if he had accounted for each day of delay for this court to exercise its discretion to grant extension of time to file an application for a bill of costs out of time.

The law is settled that for an extension of time to be granted, the applicant must show the good cause for the court to exercise its discretion (see: **Tanzania Bureau of Standards vs Anitha Kavera Maro**, Civil Application No. 60/18 of 2017) And, also following the good cause for delay, the applicant must account for each day of delay (see: **The Registered Trustee of BAKWATA vs The Registered Trustee of Dodoma General Muslim Association**, Civil Application No. 512/03 of 2019).

The applicant's explanation was to the extent that he delayed to file the application for a bill of cost since the respondent had shown an intention to appeal to the Court of Appeal. Therefore, he waited for the matter to be decided by the Court of Appeal.

It is also a settled law that, for extension of time to be granted, the applicant should account for each day of delay. In our present case, the time started to run from 15/9/2020 to 3/11/2020 within which an applicant was required to file his application before he was served with



the respondent's notice of the application for extension of time. Again, the applicant is expected to account for each day of delay from the date the respondent's application for extension of time was dismissed for non-appearance on 10/05/2021 to the time when he filed the present application on 7/10/2021 which equals to 150 days of delay.

Firstly, as to whether there was a good cause fronted by the applicant, I went to the applicant submissions and to his sworn affidavit, it is without doubt that, the reason advanced by the applicant for this court to consider in exercising its discretion to grant extension of time is based on the assertion that he delayed to file application for bill of cost because the respondent had shown an intention to appeal which also prevent him to file an application for execution as well.

From the above reason advanced by the applicant, I revisit Rule 11(3) of the Court of Appeals Rules, Cap 141 R.E 2019 to find out if the averment of the applicant had any merit. The Rule provides that:

"In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 83, an appeal, shall not operate as a stay of the execution of decree or order appeal from nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order, but the Court, may upon good cause shown, order stay of execution of such decree or order."

Guided by the above Rule, I agree with the respondent's counsel that any steps taken to the Court of Appeal, does not operate as a bar for an applicant to file execution of the decree or even the application for bill of cost from the decision emanating from this court. For that reason, it is my firm view that the applicant failed to advance good cause why his application for an extension of time to be granted.

Secondly, as to whether the applicant managed to account for each day of delay to trigger this court to exercise its discretion. For the proper records, time-lapsed the very date the statutory period of filing the application has expired which is 45 days from the date of the decision.

In our case at hand, the applicant did not account for each day of delay rather, he generalized the reasons to mean that he was awaiting the intended appeal filed by the respondent who served him with a notice of appeal to be determined by the Court of Appeal. I find this reason lacks merit and the applicant did not account for each day of delay.

It is a settled principle that for an application of extension of time to be granted, the applicant should account for each day of delay, this means that even a single day has to be accounted for. In our case at hand the applicant did not account for each day of delay. The record suggested that, the applicant delayed for almost 5 months from the date the decision




of this court was delivered. The duty to account for each day of delay has been emphasized in various cases of the Court of Appeal such as **Tanzania Fish Processors Limited vs Eusto K Ntagalinda**, Civil Application No 41/08 of 2018, CAT at Mwanza, **Dar es Salam City Council vs Group Security Co. Ltd**, Civil Application No 234 of 2015, CAT at DSM and **Juma Shomari vs Kabwere Mambo**, Civil Application No 330/17 of 2020 (both unreported).

In the upshot, I find that the applicant had failed to show good cause and to account for each day of delay for this application to be granted. Thus, this application has no merit and it is hereby dismissed. No order as to costs.




M. MNYUKWA
JUDGE
28/03/2022

Ruling delivered on 28/03/2022 whereby all parties were present.


M. MNYUKWA
JUDGE
28/03/2022