

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. APPLICATION NO 199 OF 2021

(Civil Case No.537 of 2019 before the District Court of Kinondoni)

STANBIC BANKAPPLICANT

VERSUS2

BARAKA J. KEREJA.....RESPONDENT

RULING

Last order: 7/02/2022
Date of ruling: 1/4/2022

MASABO, J.:-

Stanbic Bank was the defendant in Civil Case No.537 of 2019 before the District Court of Kinondoni. At the disposal of the suit on 26th October 2017, the respondent emerged successful with an award of Tshs 10,000,000/= as general damages a decision which has disgruntled the applicant who now intends to appeal to this court. By a chamber summons filed in this court under section 14(1) and of the Law of Limitation Act [Cap 89 R.E. 2019], the applicant, has moved this court for a leave for extension of time within which to file an appeal out of time.

The background of the application and the grounds in support of the application are espoused in an affidavit deposed by Mr. Makarios Tairo, the applicant's counsel. In this affidavit, it is deposed that the decision above disgruntled the applicant. Desirous of appealing to this court, on 26th day of

October, 2017, only one days after the delivery of the judgment, he applied for a copy of judgment and decree. His letter, annexture **"STA 1"** to the affidavit, was not responded to and he was not furnished with the copies. On 18th January 2018 he served the court with a reminder but he was made to wait to 7th February, 2018 when a copy of the judgment was furnished upon him. As the decree had not been furnished, on 8th February 2018 he wrote another letter requesting for a copy of the decree (annexture STA 4). Four days later, that is, on 12th February 2018, he was supplied with the same. Thereafter, he filed a memorandum of appeal on 27th February 2018 which was registered as Civil Appeal No.51 of 2018. The appeal was prematurely terminated on 13/9/2019 after it was struck out. He then wrote a letter on 17th September,2019 (**annexture STA 7 to affidavit**) requesting for a copy of the ruling No.51 of 2018 but, by the time he filed the instant application on 4th October 2019, the same had not been supplied.

Having narrated this background, he averred that the delay was occasioned by grounds other thnt the applicant's negligence as from the time the mother suit was terminated, he has been in the court corridors trying to pursue his right. He deponed further that, the judgment contains an illegality as the court awarded general damages to the respondent in the absence of any proof as to the damages suffered. The application was sternly disputed by the respondent through a counter affidavit.

Hearing of the application proceeded in writing. Both parties had representation. The applicant had representation of Mr. Macarious Tairo and

Africa Mazoea from Locus Attorneys and the respondent was represented by Ms. Jane Goodluck Mseja from Ottoman Attorneys. I have thoroughly read and carefully considered all the submissions for and against the application. I do not intend to reproduce them here. I will extensively refer to them as I determine the application.

From the outset, it is worth noting that, the law with regard to extension of time has been extensively litigated. Its applicable principles are certain and not difficult to find. The *first* of such principles is that, for expeditiousness and finality of litigations, the rules of procedure prescribing time within which a litigant is to take a certain legal action must be obeyed and strictly complied with **Ratnam v. Kumarasamy** (1964) 3 All ER 933). *Second*, where a party is hindered by a valid cause from taking a particular legal action, he may apply for a leave for extension of time by invoking provision which vests in courts discretionary powers to enlarge the time. In the present case, the enlargement of time is sought to enable the applicant to appeal to this court against a decision of the subordinate court. As per item I of Part II of the Schedule to the Law of Limitation Act, [Cap 89 R.E 2019], the applicant's appeal ought to have been filed within 90 days a duration which can be extended under section 14(1) of the same Act which provides that:

14.-(1) 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 *third* principle is that, the powers vested in courts by this provision are discretionary. The discretion being judicial, it must be exercised judiciously according to the rules of reason and justice. As per jurisprudence, it can only be exercised upon the court being satisfied that there exists a good cause. The duty to demonstrate the good cause rests upon none other than the applicant (see ***Benedict Mumello v Bank of Tanzania***, Civil Appeal No 12 of 2012, CAT and ***Ngao Godwin Losero v. Julius Mwarabu***, Civil Application No. 10 of 2015, CAT (all unreported).

Fourth, and as demonstrated by the applicant herein, there is no universal definition of what constitutes a good cause for purposes of extension of time. Several factors must be considered in establishing whether or not a good cause upon which to extend the time exists. (see ***Regional Manager, Tanroads Kagera v Ruaha Concrete Company Limited***, Civil Application No. 96 of 2007, CAT (unreported); ***Attorney General Versus Tanzania Ports Authority & Another***, Civil Application No 87 of 2016 CAT(unreported). According to these and many other authorities, the relevant factors for consideration include, the duration of delay-whether the delay is inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged. ***Fifth***. and as correctly

submitted by Ms. Mseja, the delay must fully be accounted for even if it is just for one day (see **Ramadhan J. Kihwani v TAZARA**, Civil Application No. 401/18 of 2018, CAT (unreported)). Based on these principles, the point for determination is whether a good cause has been demonstrated.

Thus guided, I will start with the duration for delay. From the affidavit it is deciphered that, the approximate period for delay is to years reckoned from 26th October 2017 when the decision sought to be challenged was delivered and 4th October 2019 when she filed the instant application. This is obviously an inordinate delay and inexcusable unless it has been fully accounted for. In line with this requirement, the applicant has through paragraph 4 to 12 of the affidavit narrated the circumstances behind the delay. From these paragraphs, the delay can conveniently be clustered into two periods. In the first period of the delay ranging between the date of the judgment on 26th October 2017 to 12th February when she was finally availed the copies of judgment and decree, she has wholesomely blamed the court for the delay. In my considered view, the materials rendered by the applicant has ably demonstrated that the court is to blame for this period and for this reason, this portion of the delay is excusable. I hold so, mindful of the provision of section 19(2) and (3) of the Law of Limitation Act which mandates the court to omit from computation the days during which the applicant was waiting to be supplied with copies of judgment and decree. They provide thus:

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the

period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall be excluded.

The import of these two provisions has been discussed in several decisions of the Court of Appeal including in the case of **Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No 64 of 2007 and **Sospeter Lulenga Vs. The Republic**, Criminal Appeal No. 107 Of 2006 (all unreported). The consensus in these authorities is that, the days upon which a party was waiting to be furnished with the judgment and decree should be automatically excluded from computation of time. If this period is excluded, it follows that on 27th February 2019 when the applicant filed the defunct appeal, he was well within time.

Turning to the second period of delay, that is, between 27th February 2018 when she filed the defunct appeal and 13th September 2019 when the appeal was struck out, 2019, this too is excusable as it falls within what has been termed as a technical delay (see **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 and **Samwel Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17 of 2017, CAT (unreported). Expounding this principle in **Fortunatus Masha v. William Shija and Another** (supra), the Court of Appeal stated that:

"... A distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timorousness of applying for filing the fresh appeal.

Also excusable is the period between 13th September 2019 and 4th October 2019 during which he was waiting to be availed with a copy of the ruling as per paragraph 10 to 11th of the affidavit and annexure to the affidavit.

Lastly, on contentions as to illegality, as alluded to earlier on, illegality or otherwise of the decision intended to be challenged suffices as a good cause for extension of time (**CRDB Bank Limited v. George Kilindu and Another**, Civil Application No. 87 of 2009, CAT (unreported)). This principle was also articulated in the case **Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 182. It is however to be noted that, as correctly argued by the respondent's counsel, a distinction must be made between illegality and an error of the law (See **Tanzania Rent a Car v Peter Kimuhu**, Civil Application No. 226/01 of 2017, CAT (unreported)). And, as held in **Ngao Godwin Losero v Julius Mwarabu** (supra), the illegality must of sufficient importance and apparent

on the face of the record such as the question of jurisdiction and not one that would be discovered by a long drawn legal argument or process. When this principle is applied to the deposition in the affidavit, it turns out that the point of illegality is self-defeated as the illegality of any can only be established after long drawn legal argument as to the principles applicable in award of general damages.

Having found the point of illegality devoid of merit, I will allow the application solely on the ground that the applicant had sufficiently accounted for the delay. Accordingly, leave is granted to the applicant is to file her appeal within 14 days. Each party is to bear its respective costs.

Dated at Dar es Salaam this 1st April 2022.

X



Signed by: J.L.MASABO

J.L. MASABO

JUDGE

