

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA

MISC. CIVIL APPLICATION No. 02 OF 2022

(Arising from the decision of the District Court of Ilemela at Ilemela in Probate Appeal No. 04 of 2021, Originating from probate Case No. 70 of 2021 at Ilemela Primary Court)

JULIETH PAULINUS MATWE----- APPLICANT

VERSUS

RAHEL DAUD MKOMA----- RESPONDENT

RULING

Last Order date: 11.05.2022

Ruling Date: 27.05.2022

M. MNYUKWA, J.

By the way of chamber summons, the applicant Julieth Paulinus Matwe applied to this court for an order to extend time to file an appeal out of time against the judgment of Ilemela District Court which dismissed her on 22.11.2021. The application is preferred to this court under section 25(1)(b) of the Magistrate Courts Act, Cap 11 [Re: 2019] supported by the affidavit sworn by Julieth Paulinus Matwe, the applicant.

The matter was argued orally whereas the applicant appeared in person and the respondent had a service of Ezekiel James, learned advocate.

The applicant submitted that, the decision by the District Court was delivered on 22.11.2021 and she was not supplied with a copy of the judgment after delivery. On 23.11.2021 she was sick and got treatment and given ED. On 13.12.2021 she collected the copy of the judgment and she again felt sick and for the reason that she is an adult, the medical doctor advised her to take a rest that is why she delayed to file the appeal on time.

Responding to the applicant's submissions, Mr. James opposed the prayer and prays his counter-affidavit to form part of his submissions. He avers that, it is a settled position of law that courts have discretion in granting extension of time. He went on that, the grant of extension of time is upon good cause to be shown by the applicant as to why she delayed to file within time. Referring to the trial court records, he avers that the judgment was delivered on 22.11.2021 and the applicant was supposed to appeal within 30 days, that is to say the appeal was supposed to be filed on or before 21.12.2021. He went on that the applicant filed this application on 03.01.2022 and therefore required to account for the period of delay from 22.12.2021 to the time she filed this application. He went on claim that the time stated by the applicant was within a statutory time and her reasons are not stated in her affidavit.



He, therefore, prays this court to dismiss the application for the failure of the applicant to show good cause and account for every day of delay as required. He retires and prays this application to be dismissed with costs.

Briefly, the applicant rejoins insisting that, she was receiving treatment at the hospital and prays this application to be granted.

I have given careful consideration to the arguments for the application advanced by the applicant in person and the respondent's learned counsel. The central issue for consideration and determination is whether sufficient reasons have been advanced and whether the applicant managed to account for every day of delay to warrant the extension of time sought as per requirement of the law.

The position of the law is clear and settled that, when it comes to granting an order for extension of time to appeal, the applicant should show good cause as to why he delayed to do so in the prescribed time. There is a good number of legal authorities in this respect. In the case of **Benedict Mumelo vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 the Court of Appeal of Tanzania decisively held;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."



As I revisited the applicant's affidavit and went through his submissions to find out what transpires resulting to this application. I perused the pleadings, I find this application is for an extension of time to file an appeal out of time in respect of the decision of Probate and Administration Appeal No.04 of 2021 of Ilemela District Court. As the law requires, any person aggrieved by the decision of the court, has to file an appeal within a prescribed time and if delayed, for reasons to be assessed by the court, may apply for an extension of time. The same, the applicant in this application applied for extension of time under section 25(1)(b) of the Magistrates Court Act Cap 11 [RE: 2019] which reads: -

Section 25(1)(b)

"in any other proceedings any party, if aggrieved by the decision or order of a District Court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired".

I am now settled to determine this application and, in the process, I subject the pleadings into scrutiny to find out whether the applicant has a good cause and if at all has been able to account for every day of delay for her prayer to be granted. In assessing whether there are sufficient reasons given by the applicant, I went to the pleadings and the reason advanced by the applicant which shows that, she was sick and failed to



file her appeal. On paragraph 4 of her affidavit, the applicant stated that she attended medical treatment from 24.11.2021 to 24.12.2021 where she was able to attach copies of attendance to medication (Annexure A 2) which exhibits that she attended medical treatment on 24.11.2021 at Mkingira Dispensary and also at SDA where she was treated on 15.12.2021. The same was submitted in her submission in chief that she was sick and attended medical treatment.

I am alive with the fact that, sickness is indeed a good reason for the extension of time when established and proved. In the case of **Juto Ally v. Lukas Komba & Another**, Civil Application No. 484/17 of 2017 (unreported), the Court stated that where the applicant's delay is due to illness, she must show how that illness contributed to the delay as opposed to a general statement as it were. In a subsequent decision in **Hawa Issa Nchirya vs Ramadhani Iddi Nchirya**, Civil Application No. 27/03 of 2021 citing **Juto Ally**,(supra) the Court reiterated its stance holding that to amount a good cause for the delay, there must be evidence that sickness had a bearing on the delay. (**see also Sabena Technics Limited v. Michael J. Luwungu**, Civil Application No. 451/18 of 2020)

Going to the applicant's submissions, the dates that she claims that she was sick and could not file her appeal, are within a statutory time of filing her appeal and that being a case, she was required to state further

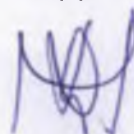


the extent of her sickness and the way it prevented her to file the appeal. Despite the applicant exhibiting that she delayed due to sickness, it is not evidenced if the applicant was admitted or afforded with ED which exempted her from filing appeal on time. It is the requirement of law as it was stated in the case of **Allison Xerox Silla v. Tanzania Hobours Authority**, Civil Reference No. 14 of 1998 Court of Appeal of Tanzania at Dar es Salaam (unreported), as quoted in **Attorney General v. Masumin and Another**, Misc. Civil Application No. 11 of 2015 that:-

"...where an extension of time is sought consequently 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."

In that regard, the applicant lacks sufficient reasons as she failed to establish how that sickness had a bearing on her delay to appeal.

Going to the days that the applicant delayed which was from 22.12.2021 to 03.01.2022, the applicant did not account for every day of delay as required by the law. It is a settled position of the law that, in an application of this nature, an applicant is supposed to account for every day of the delay even if it is a delay of a single day. From 22.12.2021 to 03.01.2022, which makes a total of 12 days, the applicant did not account



for. As held in **Hemedi Ramadhani and 15 Others v. Tanzania Harbours Authority**, Civil Appeal No. 63 of 2001 and **AMI (Tanzania) Limited v. OTTU on Behalf of P.L Assenga & 106 Others**, Civil Appeal No. 54 of 2008 (both unreported). It was emphasized that for the application for extension of time to be granted each day of delay must be accounted.

On the basis of the foregoing reasons, this application is devoid of merit. The same is thus hereby dismissed with no order as to costs.

It is so ordered.



M. MNYUKWA
JUDGE
27/05/2022

Court: Ruling delivered today this 27th May, 2022 in presence of both parties.

M. MNYUKWA
JUDGE
27/05/2022