

IN THE HIGH COURT OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. CIVIL APPLICATION NO. 8 OF 2022

(ARISING FROM CIVIL CASE NO. 3 OF 2005)

M/S SPEED SECURITY SERVICES

LIMITED..... APPLICANT

VERSUS

HUSSEIN ABDALLAH KANIKI.....1ST RESPONDENT

EMMANUEL KURES LOVOYO.....2ND RESPONDENT

RULING

Mansoor, J:

Date of Ruling- 27TH MAY 2022

The Applicant filed an application for extension of time to file a Notice of Appeal against the Judgement and Decree of the High Court of Tanzania, (Tanga Registry) in Civil Case No. 3 of



2005, a decision delivered by Hon. Rugazia J on 30th June 2015.

The reason for delay is shown in the affidavit of Clemence Luwungu, the Principal Officer of the Applicant. The main reasons are that they allege that the delay was caused by Advocate Myovela, who was instructed by the Applicant to lodge an appeal on time, but did not lodge it, and kept lying to the Applicants that he already lodged the appeal. That the Applicants were waiting to be summoned by the Court of Appeal for hearing of the Appeal but to their dismay, they came to realise that the Advocate was only collecting fees from them but never took any action. That as soon as they realised this, the Applicant instructed Advocate Catherine Lyasenga who took active steps to correct the mistakes done by the previous Advocate including withdrawing the defective application which was pending before the High Court. The application was resisted by the Counsel for the respondents saying that the delay of seven years is inordinate, and there are no sufficient reasons to grant the extension sought. That

there is no proof that the Applicant had instructed Advocate Myovela to file the Notice of Appeal, and the Courts are precluded to act on mere words from the bar which are not backed by proof.

I considered the arguments of both counsels and the decisions of the Court they referred, and I shall say that the jurisdiction of this Court on matters lying to the Court of Appeal is limited to three categories, in accordance with Section 11 (1) of the Appellate Jurisdiction Act, Cap 141:

1. Extension of time for giving Notice of Appeal.
2. Extension of time for making an application for leave to appeal.
3. Extension of time to file a certificate on point of law.

This is held in the case of **Ibrahim Mbando vs Abbas Mtigo Civil Appeal No. 96/2005**, at page 5, and the case of the **Attorney General vs Board of Trustees of**

Cashewnut Industry Development Trust Fund and another, Civil Appeal no. 73 of 2015. In the Ibrahim Mbando's case, his Lordship Kaji JA, had this to say:

"Under Section 11 (1) of the Appellate jurisdiction Act, 1979, as amended, the jurisdiction of the High Court in respect of extending time to matters coming to this Court is limited to three categories: One, to extend time for making an application for leave to appeal. Two, to extend time for making an application for leave to appeal. Three, to extend time for a certificate that the case is a fit case for appeal (certificate that a point of law is involved.)"

Section 11 (1) of the Appellate Jurisdiction Act, provides as follows:

- 1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to

appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

It appears that the Applicants herein delayed in filing the appeal at the Court of Appeal due to their own negligence. The story given by Advocate Catherine Lyasenga about Advocate Myovela is a hearsay and not backed by any proof, and so, totally unsafe to the court to believe a mere story from the Counsels who blames other counsels for negligence without substantiating with proof those serious allegations against the other counsels. Again, there was no proof whatsoever from the Applicants either in the form of an affidavit or any other proof to prove before this court that they had instructed Advocate Myovela to file an appeal against the decision of this Court since 2005, and they kept waiting until

2022 to realise that Advocate Myovela was only playing tricks on them for the purposes of illegally taking money from them. The Applicants did not take any steps against Advocate Myovela even after realising that he never filed any appeal or review, and was only receiving fees. Nothing was filed in Court proving that there is an Advocate with the name Myovela, and his licence was valid at the time he took instructions, and that he was duly instructed by the Applicant to lodge an appeal. The story is shaky and not easy to believe and cannot, in any way, amount to sufficient cause to grant the extension.

It is obvious that the appellants did not take steps necessary for lodging a competent appeal in the Court of Appeal thereby not only inconveniencing the respondent but also giving a lot of costs to the respondent. As held in the case of **Kalunga and company Advocates vs National Bank of Commerce (2006) TLR** which states basically that matters of extension of time are matters of discretionary powers of the court, and "*where there is inaction or delay on the part of the*

applicant, there ought to be some kind of explanation or material to enable the Court to exercise the discretion given by Rule 8 of the Court of Appeal Rules."

The Applicants ought to have taken active steps for expeditious finalization of their appeal, otherwise it is an abuse of the processes of the court for a party to prolong litigations. The Applicants cannot continue to litigate for years and years. Litigations must come to an end. The Applicants cannot be allowed to file the Notice of Appeal after being careless and negligent.

The affidavit of the Applicant in support of the application shows no sufficient cause for granting the prayers sought. See the case of **the Registered Trustees of the Archdiocese of Dar es Salaam vs the Chairman, Bunju Village Government and 11 others, Civil Appeal No. 147 of 2006**, Msoffe J.A, CA, at page 9, said:

2) *"In giving liberal interpretation to the words "sufficient cause" to this case it will be noted at once that the respondent had no good case on the merits of their intended appeal to the High court. They could not have had good case when, as already stated, they did not apply for leave to appear and defend the suit in RM's Court in the first place. If they had wished their starting point really ought to have been to file an application in the RM's Court for extension of time to file an application for leave to appear and defend. Their application for extension of time to file a written statement of defence was misconceived, to say the least."*

In emphasizing the points on what constitutes sufficient cause, the case of **Regional Manager, TANROADS Kagera vs Ruaha Concre Company Limited, Civil Application no. 96 of 2007**, and the case of **Ratma vs Cumarasamy and another (1964) 3 All ER, 933** in which Lord Guest had this to say at page 935A-

"The rules of court must, prima facie be obeyed, and to justify a court extending the 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, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation”.

Although matters of extension of time are matters of judicial discretion, such discretion should be exercised if sufficient reasons have been shown as stated in the case of **Kalunga and Company Advocate vs National Bank of Commerce (2006) TLR 235.**

Ordinarily the time schedule contained in the provision of the law is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the Applicants shall not be granted just as a matter of routine and merely for asking, more so when the period for doing the acts asked for in the chamber summons has long



expired, and the Applicants have failed to account for each day of delay.

Applying to above principles to the facts of the present case and particularly since the applicants were careless in obliging with the procedures for a competent appeal and they were duly represented by an abled advocate for the period of seven years to have the appeal properly instituted at the Court of Appeal, the reasons advanced by the applicant cannot constitute sufficient cause as can be vividly seen there was negligence and lack of diligence on their part.

Consequently, based on the above discussions, the applicant failed to provide good cause for the court to extend the time to file the Notice of Appeal. Thus, the application is dismissed with costs.

DATED at **TANGA** this 27th day of MAY 2022



A handwritten signature in blue ink, appearing to read "Mansoor", is written over the printed name.

MANSOOR

JUDGE

27TH MAY 2022