

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

MISC. CIVIL APPLICATION NO.531 OF 2021

(Originating from Civil Reference No. 8 of 2020)

ANTHONY MAZIKU.....APPLICANT

VS

ELIZABETH MAZIKU..... RESPONDENT

Date of Last Order: 13/09/2022

Date of Ruling: 10/02/2023

R U L I N G

MGONYA, J.

Before this Honourable Court is an application filed by the Applicant named herein. The application has been made under **section 11(1) of the Appellate Jurisdiction Act Cap. 141 [R. E. 2019]**. This application seeks for the Court to grant an extension of time for filing leave to appeal to the Court of Appeal.

The application was supported by an dully signed by **MR. ANTHONY MAZIKU** the Applicant herein. When the matter came for hearing, the Applicant enjoyed the services of **Mr. Mashiku Sabasaba** Learned Counsel while the Respondent was represented by **Mr. Kizito** learned Counsel.

After pleadings were complete, the Court ordered that the application be heard by way of Written Submissions. Counsel for

both parties having complied to the scheduling order this Court was in the position to determine the Application.

It was the Applicant's submission that, he prays to adopt his respective affidavit as part of his submissions. The Applicant before this Court prays for an extension of time so as to file leave to appeal to the Court of appeal against the decision of this Court. The said decision was delivered on **28/05/2021** before Hon. Ebrahim, J. An extension of time is sought as a result of the Court's delay in supplying the Applicant with the copies of Judgment and Decree, and that the delay was not sheer delay.

Arguing the application, the Respondent averred in her submission that, the grounds advanced by the Applicant for seeking an extension of time are not sufficient enough as explained.

It was also the Respondent's submission that there is no hard and fast rule as to what constitutes good cause. Moreover, the Court has at all times emphasised that each case depends on its own circumstances while exercising its powers on extension of time judiciously.

Further, the Respondent also contends that the Applicant has not accounted for each day of delay and it is negligence which led him to delay to file for leave hence making his arguments baseless. The case of ***BHARYA ENGINEERING &***

CONTRACTING CO. LTD VS HAMOUD AHMAD NASSOR
CICIL APPLICATION NO. 342/01 OF 2017 was referred to in support of the argument. The Respondent emphasised that the Applicant was negligent in making follow-up of the copies of Judgement within time which led to his delay. The reason that contents of the Judgement were not fully read is not true since he also did not show what part was not read.

Having gone through the submissions of both parties to this Application, I have the obligation to remind the audience that an extension of time is vested within the powers of the Court to grant or not grant and the same is required to be exercised judiciously.

In this application the Applicant is seeking for extension of time to file an application for leave to appeal to the Court of Appeal against the decision of **Civil Appeal No. 49 of 2019** that was determined by this Court. The contention of this application is traced from the Chamber summons and paragraph **4, 5, 6** and **7** of the sworn Affidavit with advanced reasoning of the delay as observed in the submission for seeking the said extension.

It is however, from the Applicant's submission that he was prompt in taking action for requesting the copies of Judgement and Decree. The same was evidenced by letters written to the

Registrar's office but even then, the said copies were not availed to him on time. Observing the records of the Court the attached Decree supplied to the Applicant shows that the same was received on the **11/08/2021**. It is for such reason the same states that it was the Court that delayed him to secure the said documents in time hence the delay.

The Respondent replied to the Applicant's submissions by stating that the reasons for the Applicants delay are not sufficient enough since he has not accounted for the days, he delayed which is one of the principles basing on an extension of time. And that he was not prompt in making follow-ups of the documents it is his own negligence that caused the delay.

An extension of time has been reiterated by the Court in a series of cases that have laid down the principles to be abided with for the Court to grant the same. In the case of ***PARADISE HOLIDAY RESORT LIMITED VS THEODORE N. LYIMO, Civil Application No.435/01 of 2018*** it was stated that:

"...but the Court consistently considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is point of law sufficient importance such

as the illegality of the decision sought to be challenged”.

From the decision above, I have observed that the reasons for the delay of filing the said application by the Applicant was due to the delay caused by the Court and not his negligence or fault. The copies of Judgement and Decree were not in his hands timely although followups were made.

Having received the copy of the decree on **11/08/2021** from the date the decision was delivered amounts to a technical delay, that I find to be faulted by the Court. The Court was urged to differentiate between a real delay from an actual delay. This was stated in the case of ***FORTUNATUS MASHA vs WILLIAM SHIJA [1997] T.L.R.*** It is in the records that the Applicant received the copies of decree on **11/08/2021** and this application was filed on **28/10/2021**. It goes without saying that there was a delay of two months that lapsed.

It is trite law that days of delay have to be accounted for and the same ought not to be an inordinate delay. This was stated in the case of ***LYAMUYA CONSTRUCTION COMPANY LTD V. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010*** where it was stated that

for an extension of time to be granted the following ought to be done:

- (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.***
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.***

It is from circumstance of this case and its nature and the reason stated under paragraph 7 of the affidavit that, **I find for the interest of substantive justice** and that since each case is decided depending on its circumstances that **this application is competent.**

In the event therefore, this application for extension of time to file leave to appeal to the Court of Appeal is hereby granted. The Applicant is ordered to file leave within 30 days from the date of this decision.

It is so ordered.

Each party to bear their own costs.

Right of appeal explained.



L. E. MGONYA

JUDGE

10/02/2023

ORIGINAL