

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. CIVIL APPLICATION NO. 36 OF 2022

(Arising from the decision of Hon. A.E. Mwiipopo, J. dated 11/11/2021 in (PC) Civil Appeal No. 45 of 2020, arising from Civil Appeal No. 53 of 2019 of Muleba District Court and originating from Civil Case No. 108 of 2019 of Muleba Urban Primary Court)

EVANGELINA K. CHARLES.....APPLICANT

VERSUS

PROJESTUS RUTINWA BENDABENDA.....RESPONDENT

RULING

08/02/2023 & 17/02/2023
E. L. NGIGWANA, J.

This is an application for extension of time within which to file application for certificate on point of law. The application is made under section 5 (2) and section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R:E 2019], supported by an affidavit deposed by the Applicant.

A brief background of this application is to the effect that; vide Civil Case No. 108 of 2019 of the Primary Court of Muleba District at Muleba Urban, the respondent successfully sued the applicant as an administratrix of the estate of the deceased Erasto Higombeya Andrea for the recovery of **Tshs. 10,500,000/=**.

The applicant was aggrieved by the decision of the primary court therefore, she appealed to the District Court of Muleba vide Civil Appeal No. 53 of 2019, but

she lost the matter. Still aggrieved, she appeal to this court vide (PC) Civil Appeal No. 45 of 2020 but in vain.

In her desired effort to appeal to the Court of Appeal, she found herself out of time, thus filed Misc. Application No. 6 of 2022, but the same ended up being struck out on 29/7/2022 for being incompetent. On 9th day August 2022, the applicant filed the present application whereas in her affidavit, she stated two reasons for the delay; E-filing problems and technical delay.

At the hearing of this application, the applicant was represented Mr. Samwel Kiula, learned advocate whereas the respondent had the legal services of Mr. Remidius Mbekomize.

Submitting in support of the application, Mr. Kiula submitted that right after the delivery of the decision of this court in Civil Appeal No. 45 of 2020, the applicant lodged a Notice of Appeal to the Court of Appeal.

He added that the applicant on 08/12/2021 through E-filing system, filed an application for certificate on point of law and was admitted on 11/12/2021, whereby she received notification which read as follow;

"Judiciary dear customer, your case named Miscellaneous Civil Application has been received on 2021 -12-08 16:02:57 and admitted for registration at the

Bukoba High Court on 2021-12-08 16:01:57. We will send to you the registration information soon. Thank you – (Timely and accessible justice for all).

He added that, after the said notification, the applicant arrived at the High Court Registry on 11/12/2021 to know what went wrong because the Control number for the purpose of paying the necessary filing fee was not sent to her electronically, and was attended by the High Court Registry Officer who informed her that the said E- filed application is no longer existing in the system hence she was advised to lodge an application for extension of time, and she did so, but the same was later struck out on technical grounds which constitutes the so called technical delay. He added that, in that premise, the applicant has never been negligent.

In reply, Mr. Mbekomize submitted that the judgment of this court was delivered on 11/11/2021, thus 30 days lapsed on 11/12/2021. He added that the High Court Registry Officer who assisted the applicant had not been mentioned in the applicant's affidavit, likewise the said officer's affidavit was not attached to the chamber summons to assist the court to know that the applicant duly filed her application within time but due to E-filing problems, her document got lost and as a result she was advised to lodge an application for extension of time.

He went on submitting that, taking into account that Misc. Application No.06 of 2022 was struck out on 29/7/2022 and the instant application was filed on 09/08/2022, the applicant had the duty to account for ten (10) days of delay, but she has not done so. Mr. Mbekomize ended up his reply submission urging the court to dismiss this application for want of merit.

In his rejoinder submission, Mr. Kiula submitted that the applicant is a laywoman who lives in the rural area and who had to struggle to seek for legal assistance thus the delay of ten (10) days is not fatal. He added that each case has to be decided in its own circumstances whereas, in the instant matter it is in the interest of justice that the applicant be granted extension of time.

This court being temple of justice, and for the interest of justice, I was compelled to call the Registry Officer Mr. Bampoliki who confirmed in the presence of both parties that, the applicant through E-filing duly filed her application on 08/12/2021 and was duly admitted by the Deputy Registrar in the E- Case filing system as per notification sent to her, but the system misbehaved as a result, her application got lost; that is why she was advised to file an application for extension of time.

Now the issue before me for determination is whether the applicant has demonstrated sufficient cause to warrant this court to exercise its discretion to

extend time. Having considered submissions, affidavit in support of the application and counter affidavit against the application, the issue for determination is whether the applicant has demonstrated sufficient cause to warrant extension of time.

It is trite that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This principle was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227 that;

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

In **Regional Manager TANROAD Kagera versus Ruaha Concrete**

Company Ltd, Civil application No. 96 of 2007 CAT (unreported) the court held that;

"The test for determining an application for extension of time is whether the applicant has established some material amounting sufficient or good cause as to why the sought application is to be granted."

What amounts to sufficient cause or good cause is not defined in the statutes.

However, in the case of **Lyamuya Construction versus Board of**

Registered Trustees, Civil Application No.2 of 2010 CAT (Unreported), factors to be considered before granting or refusing extension of time are; whether the applicant has accounted all days delayed, whether the delay is inordinate or not, whether the applicant has shown diligence, and not apathy negligence or sloppiness in prosecution of the action that he intends to be taken. Last but not least, if the court feels that there is any point of law of sufficient importance such as the illegality involved in the decision sought to be challenged.

Furthermore, the court of appeal of Tanzania in the case of **Masalu versus Tanzania Processing Ltd**, Civil Application No. 13 of 2020 held that-

"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one, is dependent upon a party seeking extension to prove the relevant material in order to move the court to exercise its discretion".

Generally, from the herein above Court of Appeal authorities, it can be learnt that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the court. The applicant must give valid, clear and sufficient reasons upon which the discretion can be favorably exercised.

In the instant application, it is apparent that the decision of this court in (PC) Civil Appeal No.45 of 2020 was delivered on 11/11/2021. Since the matter originates from primary court proceedings, the applicant must seek and obtain a certificate on point of law before knocking the doors of the Court of Appeal.

According to the applicant's affidavit, submission by Mr. Kiula, and confirmation made by the High Court Registry Officer, the applicant duly filed her application within time and was admitted as per notification sent to her. Now, whether the E-filing system misbehaved or not, cannot in any rate used to punish the applicant. Frankly speaking, the applicant filed her application within time therefore; she was not at all negligent. E-filing problems which later on emerged were out of her control, and after having been advised to file extension of time, she did so accordingly by filing Misc. Civil Application No.06 of 2022 which was struck out 29/07/2022.

The time spent by the applicant to prosecute the incompetent application constitutes the so called technical delay. I have also considered the fact that the applicant delayed for ten (10) seeking for the necessary filing fee as well as legal assistance for the purpose of filing a proper application since she is a laywoman and found that the delay was not inordinate. As stated by Mr. Kiula, Each case needs to be decided in its own peculiar circumstances. Considering

what has transpired in this in this court as far as E- cases filing system is concerned and the advice given to the applicant by the Registry officer and steps taken by her to act upon the advice, but also considering the fact that the delay of 10 days being inordinate delay, and that it has been duly explained what the applicant was doing in those days, I am convinced to exercise the discretion of this court to grant the applicant extension of time within which to file application for certificate on point of law out of time.

In the event, the applicant is granted Twenty one (21) days from the date of this ruling to file an application for certificate on point of law as per the law. Each party shall bear its own costs.

Dated at Bukoba this 17th day of February, 2023.

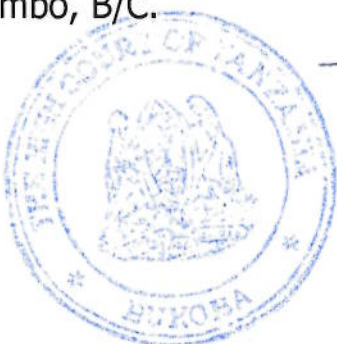


E. L. NGIGWANA

JUDGE

17/02/2023

Court: Ruling delivered this 17th day of February, 2023 in the presence of Mr. Samwel Kiula, Advocate for the applicant, Mr. Derick Zephurine, Advocate for the respondent, Hon. E. M. Kamaleki, Judge's Law Assistant and Ms. Sophia Fimbo, B/C.



E. L. NGIGWANA

JUDGE

17/02/2023