

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA**

**MISCELLANEOUS CIVIL APPLICATION NO. 39 OF 2022**

(Originating from the High Court of Tanzania at Mbeya DC Civil Appeal No. 5 of 2016  
arising from The Resident Magistrate Court of Mbeya at Mbeya Civil Case No. 4 of  
2015)

**BRYSON NDOGOMA MTEPA ..... APPLICANT**

**VERSUS**

**TEMBO COFFEE COMPANY ..... RESPONDENT**

**RULING**

**Date of last order: 15/12/2022**

**Date of ruling: 17/02/2023**

**NGUNYALE, J.**

By chamber summons the applicant BRYSON NDOGOMA MTEPA moved this court under section 11 (1) of the Appellate Jurisdiction Act Cap 141 R. E 2022 and section 95 of the Civil Procedure Code Cap 33 against the respondent TEMBO COFFEE COMPANY praying for the orders **one**, extension of time upon which to lodge notice of intention to appeal and leave to appeal to the Court of Appeal of Tanzania, **two**, costs of running the case and **three**, any other order or relief(s) the court may deem fit to grant.

The application was filed at the instance of an affidavit sworn by the applicant BRYSON NDOGOMA MTEPA and resisted by the counter affidavit

of one VALENTINE OMEGA the principal officer of the respondent. The applicant deponed that he was a plaintiff in Civil Case No. 4 of 2015 in the Resident Magistrate Court of Mbeya at Mbeya in which the decision was entered on 14<sup>th</sup> December 2015 in favour of the respondent. He was aggrieved with the said decision thus he preferred DC Civil Appeal No. 5 of 2016 in this court whereby the appeal was dismissed on 31<sup>st</sup> October, 2019. The fact that he was again aggrieved with the decision of the High Court he successful filed notice of appeal and an application for leave to appeal to the Court of Appeal of Tanzania.

The applicant stated further that he was the appellant in the Court of Appeal via Civil Appeal No. 371 of 2020 whereby the appeal was struck out on 21<sup>st</sup> September, 2022 for being time barred as the appeal was filed on 12<sup>th</sup> August 2020 beyond 60 days since the impugned judgment was delivered 31<sup>st</sup> October 2019 but certificate of delay was not attached to his appeal. In his further averments under paragraph 6 of the affidavit he averred that he was not negligent to pursue his appeal on time but it was due to technical delay that unfortunately he failed to attach a certificate of delay to support the appeal, the appeal has a lot of chances to succeed.

The averments of the respondents in the counter affidavit are that the applicant has no ground of extension of time because he never applied for a certificate of delay thus the court never issued him with it. He did



not state why he did not attach a certificate of delay and by any means his appeal had no chances of success instead it is a wastage of the court's time. In the interest of justice, the application for extension of time be denied.

The parties had chance to submit. The applicant submitted that in preparing the records and memorandum of appeal the fact of being unacquainted with laws depending on the directives of the registry officers of the Court of Appeal who however misguided him in applying for the certificate hence failed to attach a certificate of delay. Extension of time is a discretion of the court upon the applicant establishing sufficient or good cause for the delay. In the instant case it is not negligent which caused him not to attach certificate of delay to the records and memorandum of appeal. He submitted further that certificate of delay is the certificate of assurance of completeness of the record of proceedings issued by the Deputy Registrar of the High Court. He cited Rule 90 (1) of the Court of Appeal Rules, 2009 on the relevancy of the certificate of delay in facilitating appeal process. The rule states; -

*"... there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant"*



He rested his submission by urging the court to give him an opportunity to appeal because appeal is one of the crucial constitutional right, denial of such right to the applicant is like denying right to be heard.

In reply the respondent under the service of Lusiu Peter learned Counsel submitted that the law on extension of time is settled that; in exercising discretionary powers of granting extension of time such discretion must be exercised by the courts judiciously and it is the duty of the party seeking extension of time to demonstrate sufficient reasons in order to persuade the court to exercise its discretionary powers over the same.

The Court of Appeal has set some guiding principles to be looked at when determining the question as to whether or not to grant extension of time.

In the case of **Royal Insurance Tanzania Limited vs Kiwengwa Strand Hotel Limited**, Civil Application No. 111 of 2009 (unreported) at page 13 and 14, the Court of Appeal quoted with approval another decision of the same court in **The Attorney General vs Twiga paper Products Limited**, Civil Application No. 128 (unreported) when discussing on the discretionary powers in granting extension of time to parties, the Court of Appeal stated the following; -

*"In this case, the matters that would be taken into account were listed as follows*

- (i) Length of the delay;*
- (ii) Reasons for the delay;*



- (iii) *The degree of prejudice to the respondent if the application is granted;  
and*
- (iv) *Chances of appeal succeeding if the application is granted"*

Another guiding principle as laid down in the case of **Musa Zongori Kisere v Richard Kisika Mugendi and others** (Civil Application No. 244 of 2019 Court of Appeal of Tanzania is that a party seeking extension of time must account for each day of delay. The respondent Counsel was of the view that the present application falls short of the above criteria or any other criteria in their totality. The applicant has miserably failed to demonstrate sufficient reasons to warrant the court to extend time. It is without doubt that the applicant filed his appeal outside the prescribed 60 days because the impugned decision was handed down on 31<sup>st</sup> October 2019 and the applicant filed notice of appeal on 12<sup>th</sup> November 2019. He was required to lodge his memorandum and records of appeal within sixty days from 12<sup>th</sup> November 2019 when he lodged his notice of appeal however the applicant lodged his memorandum and records of appeal on 12<sup>th</sup> August 2020 which was way back beyond the sixty days prescribed by law. Therefore, he is seeking extension of time because his appeal collapsed because of delay as he did not attach a certificate of delay. The respondent Counsel went on to submit that the reasons for delay deposed and submitted by the applicant are not sufficient to warrant extension of time, the allegations that he failed to attach a certificate of delay is an





afterthought after the appeal collapsed. He submitted that he was mis guided by the registry officer because he was not aware of the law. It is the law that ignorance of law is not an excuse, the case of **A. H. Muhimbira and two others v. John K. Mwanguku**, Civil Application No. MBY 13 of 2005, Court of Appeal of Tanzania at Mbeya (unreported) stated; -

*"On the other hand, even if it is accepted that the applicants themselves did not know the correct legal position to follow, it is trite principle that ignorance of legal procedure would also not constitute sufficient reasons for extending time."*

Basing on the above extract the respondent submitted that failure to attach a certificate of delay when the appeal was lodged was not sufficient reason, the delay is generally inordinate.

From the rival submission of the parties and the obvious legal practice and procedure the court has discretion to grant extension of time upon demonstrating sufficient cause including accounting for each day of delay. The applicant in his affidavit he deponed under paragraph 6 of the affidavit that he was not negligent to pursue his appeal on time but it was due to technical delay that unfortunately he failed to attach a certificate of delay to support the appeal. In his submission, he submitted that in preparing the records and memorandum of appeal the fact of being unversant with laws depending on the directives of the registry officers



of the Court of Appeal who however misguided him in applying for the certificate hence failed to attach a certificate of delay.

Paragraph 6 of the affidavit of the applicant bears reason for his failure to file his appeal on time on technical basis. He avers that he did not attach the certificate of delay to cover the period of delay which was caused by registry processes. The averments were strongly contested by the respondent on the fact that the applicant did not state the reason why the certificate of delay was not attached and after all he did not apply for it. Having read and weighed careful the affidavit and the relevant submission, I agree with the respondent that the averments of the applicant do not contain evidence about reasons as to why such certificate was not attached instead the reasons are found in the applicant's submission. In the submission he said that the fact of being unversant with laws and the misguidance he received from the court registry officer who made him not to procure and attach the certificate of delay is the source of the delay. I am aware that affidavit is evidence but submission however attractive can never become evidence. It is my settled view that the reasons for the delay were not proved at all. The fact that they were not proved it becomes as good as having no good or sufficient reasons for the court to exercise its discretionary powers to grant the present application for extension of time. In the case of **Registered Trustees of**



**the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village**

Government & 11 Others, Civil Appeal No. 147 of 2006 it was observed; -

*" . . submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."*

The affidavit of the applicant being a substitute of oral evidence ought to contain all important facts proving that he really had good reasons for the delay. Even the allegations that he was misled by the court official ought to be pleaded in the affidavit except the point of law which may be addressed without an affidavit.

The second reason raised by the applicant was that he was not conversant with the laws of procedure on certificate of delay. In this point I wish to buy the words of the respondent's counsel that ignorance of law does not constitute a sufficient reason. Be it as it may, it is however, a long-established principle that, ignorance of the law or rather procedure involved in doing something does not constitute good cause to warrant extension of time. This position was stressed in the case of **Farida F. Mbarak and Another v. Domina Kagaruki and 4 Others**, Civil Reference No. 14 of 2019 (unreported) where the Court considered an akin situation and clearly stated that:





*"The law was therefore not new and the applicant's contention that the law was not accessible or that there was confusion in what the law, as rightly found 13 by the learned single Justice, was nothing but a plea of ignorance of law which has never been accepted as a sufficient reason or good cause for extension of time."* [Emphasis added]

On my part, I subscribe to the above position as submitted even by the respondent's Counsel. I agree with the respondent that ignorance of the law does not constitute a good cause for extension of time. Therefore, based on the above cited authority, I find that the applicant's contention is baseless and cannot amount to sufficient cause for extension of time.

From what has been stated and done, the court is confident that the applicant failed to advance sufficient reasons attracting grant of his application for extension of time to lodge notice of intention to appeal and leave to appeal to the Court of Appeal out of time. Consequently, the application is hereby dismissed with costs for want of merit.

Dated at Mbeya this 17<sup>th</sup> day of February 2023.



**D. P. Ngunyale**  
Judge

Delivered this 17<sup>th</sup> day of February 2023 in presence of the applicant in person.

**D. P. Ngunyale**  
Judge