

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA

MISC. CIVIL APPLICATION No. 109 OF 2022

(C/F Civil Case No. 6 2021 Resident Magistrate Court of Arusha at Arusha)

JANETH GINAI HENRY ALBERTH FOSBROOK APPLICANT

VERSUS

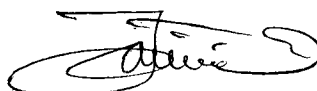
BARAKAELI ANDREA MMARIRESPONDENT

RULING

13th December, 2022 & 17th March, 2023

TIGANGA, J.

The applicant is seeking for extension of time so that he can file appeal to this Court against the decision of the Resident Magistrate's Court of Arusha (trial court) in Civil Case No. 6 of 2021, which was delivered on 13th December, 2022. The application is by chamber summons made under section 14 (1) of the **Law of Limitation Act, Cap 89** [R.E 2019] and is supported by applicant's sworn affidavit containing the grounds for application. The same was opposed by the respondent who filed his counter affidavit in which he noted most of the facts deposed by the applicant and disputed some of the facts, while putting the applicant to strict proof.

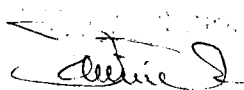


According to the applicant's affidavit the main cause of delay was late supply of the copies of ruling, proceedings and orders from the trial court.

During hearing of the application which was by way of written submission, the applicant appeared in person and unrepresented whereas the respondent was represented by Mr. Emmanuel Kileo, learned Advocate.

Supporting the application, the applicant submitted that, immediately after the ruling was delivered on 13th December, 2021, on 15th and 27th December, 2021 she wrote letters to the trial court praying to be supplied copies of the decision and drawn order so that she could timely appeal. It was until 3rd March, 2022 when she was supplied with such copies but when she approached her Advocate to prepare grounds of appeal, they discovered that, the date on the drawn order is different from that indicated in the ruling. In the effort to cure the defect, on 9th June, 2022 she wrote a letter to the Resident Magistrate in charge requesting for rectification. The same was rectified and certified on 10th August, 2022 and since she was already out of time, she decided to file the current application.

The appellant also submitted that, there is an issue of illegality in the intended appeal as the trial court erred in holding that, it had no pecuniary

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jurisdiction to deal with the matter but the primary court while the amount in dispute due to breach of contract is Tshs. 150,000,000/=. She prayed that, this Court grant her application as sought.

In reply, Mr. Kileo submitted that, according to the applicant, she was supplied with rectified copies on 10th August, 2022 but she filed this application on 22nd August, 2022 hence there are 12 days of delay unaccounted for. He referred the court to case **of Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2010 and argued that, even a single day of delay has to be accounted for and the applicant has failed to do so. He prayed that this application be dismissed with cost.

In her brief rejoinder, the applicant added that, after she was supplied with requisite copies, she filed her application online on 10th August, 2022 however it was not successful on the first time. She did it again and managed to get control number, paid the court fees and filed the hard copies which were admitted on 22nd August, 2022 thus, she was never late. Apart from that, she reiterated her earlier submission and prayed that this Court grant her extension of time.



Having considered arguments for and against the application by both parties, the issue is whether the applicant has demonstrated sufficient cause for the delay in filing her appeal before this Court. It is a trite principle that, an application for extension of time is entirely the discretion for the court to grant or refuse. For such application to be granted or be considered by the court, the applicant has to show good cause. The discretion is judicial and not according to private opinion or arbitrarily. There are a number of Court of Appeal decisions which set principle in determining good cause and one of them is **Eliakim Swai and Another vs. Thobias Karawa Shoo**, Civil Application No. 2 of 2016 (CAT) at Arusha (unreported). Those reasons include, among others, the applicant must account for all the period of the delay and such delay should not be inordinate. Also, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take.

In consideration of the above, the applicant has accounted for her delay on two facets. **First**, she was delayed to be issued with necessary copies for appeal and when she was handed the same, there was an error which needed rectification which even the respondent does not dispute. Section 19 of the **Law of Limitation Act**, provides for the exclusion of time



spent in obtaining copies of the judgment, decree, ruling, orders and proceedings. Such time is excluded from computation of the period of limitation. Also, in the case of **Trustees of Marian Faith Healing Center @ Wanamaombi vs. The Registered Trustees of the Catholic Church of Sumbawanga Diocese**, Civil Appeal No. 47 of 2007, CAT at Dsm (unreported), Court of Appeal held that;

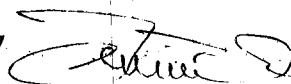
"In computing time period of appeal, the time spent to obtain a copy of the Judgment should be excluded."

In the circumstances, the applicant was not negligent in pursuing her rights, she showed high level of promptness and due diligence which is a sufficient cause to grant extension of time. On the **second** facet, after she was supplied with rectified copies on 10th August, 2022, records show that this application was filed on 22nd August, 2022 which is 12 days later. In her rejoinder, the applicant submitted that, the hard copy was admitted in court on 22nd August, 2022 but she filed her application on 10th August, 2022. With the current development of e-filing system in our Judiciary, once in a while errors do occur due to challenges like poor internet connections and the like. With the way the applicant made follow ups which shows promptness, and taking into consideration that granting of extension of time is entirely court's

discretion, I find that the technical error on the side of the Judiciary should not bar her to pursue her right. In the case of **Philemon Mang'ehe t/a Bukine Traders vs. Gesso Hebron Bajuta**, Civil Application No. 8 of 2016, CAT at Arusha, the Court of Appeal observed that;

"Taking into consideration the circumstances surrounding this case and the fact that the applicant had not been sitting idle, I am of the considered view that, good cause has been established. In a result, extension of time is hereby granted to the applicant to file his application for Reference. The application should be filed within a period of seven (7) days from the date of the delivery of this ruling."

Regarding the issue of illegality as pointed out by the applicant, the law is certain and the Court of Appeal decisions are one that, illegality of the decision intended to be challenged suffices as a good cause for extension of time as held in the case of **CRDB Bank Limited vs. George Kilindu and Another**, Civil Application No. 87 of 2009, CAT (unreported) and **Secretary, Ministry of Defence and National Service vs. Devram Valambhia** (1992) TLR 182). However, it is to be noted that, the same must be apparent on the face of the record such as the question of jurisdiction and not one that would be discovered by a long drawn legal argument or process. In the

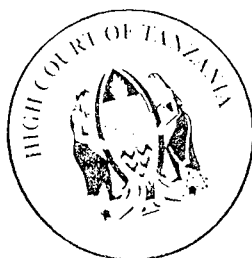


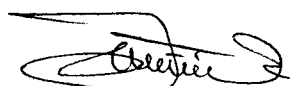
application at hand, the trial court held that, the amount in dispute due to breach of contract is Tshs, 24,000,000/= hence the same ought to have been filed at the Primary Court. On the other hand, the applicant claims that, the cause of action is breach of contract valued Tshs. 150,000,000/= which the Primary Court has no jurisdiction. This in my view needs more evidence to conclude and is definitely not apparent on the face of record. The reason for illegality therefore fails.

For the reasons herein stated, I am of the conclusion that, the application is meritorious and deserve granting extension of time. The applicant is hereby granted 14 days to file her appeal. Cost to follow the events.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 17th day of March, 2023




J.C. TIGANGA
JUDGE