

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 306 OF 2022**

(Arising from Civil Appeal No. 15 of 2011 of the High Court of Tanzania at Dar es  
salaam)

**KASSIM ALLY MAHONYA.....APPLICANT**

**VERSUS**

**BENEDICT JOSEPH NJAU.....RESPONDENT**

**RULING**

Date of last order: 14/03/2023

Date of ruling: 05/04/2023

**E.E. KAKOLAKI, J.**

The applicant herein is seeking an extension of time within which to file a Notice of appeal to the Court of Appeal out of time in respect of the decision of this Court in Civil Appeal No. 15 of 2011, delivered on 13/02/2013. The application is preferred under the provisions of section 11 (1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2002] (the AJA) and Rules 10 and 83(2) of the Tanzania Court of Appeal Rules, 2009, supported by the applicant's affidavit.

Hearing of the application took the form of written submission and it is the applicant alone who appeared represented by Mr. Humphrey Mwakajinga, learned advocate, who filed the submission as the matter proceeded ex-parte against the respondent upon Court's satisfaction through process server's affidavit sworn on 07/02/2023, that he received the summons but refused to appear in Court. It is however noted that, after exparte order was entered on 01/03/2023 against the respondent and the applicant ordered to file his submission in chief, the respondent without leave of the Court on 14/03/2023 filed the counter affidavit, the date in which the ruling date was set. I will therefore not make any reference to the said counter affidavit as the same is as good as not filed.

It is also noted with concern that, in moving this Court the applicant has cited the provisions of Court of Appeal Rules which are not applicable. Nevertheless, much as this Court has jurisdiction to hear the application under section 11(1) of AJA, which is also cited as enabling provision, I disregard the wrongly cited rules and proceed to determine matter on merit. As alluded to above this Court under the provisions of section 11(1) of AJA, is crown with powers to grant extension of time to the applicant as prayed, but only upon good cause shown. And what amounts to good cause is not

defined since a number of factors have to be taken into consideration as pronounced in plethora of authorities to include but not limited to whether or not the application has been brought promptly; the absence of any or valid explanation for the delay and lack of diligence on the part of the Applicant. See the cases of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001, **International Airline of the United Arab Emirates Vs. Nassoror**, Civil Application No. 263 of 2016 and **Benedict Mhagama Vs. Kalaita Yohana (the Administrator of the estate of the late Sophia Mohamed)**, Civil Application No. 376/17 of 2019 (all CAT-unreported). It is also the law that, in granting extension of time each day of delay must be accounted for or there must be any other sufficient reasons for the delay. See the cases of **Sebastian Ndaula Vs. Grace Rwamafa**, Civil Application No 4 of 2014 and **Tanzania Coffee Board Vs. Rombo Millers Ltd**, Civil Application No 13 of 2015 (both CAT-unreported). It was held in the latter case thus:

*Extension of time should be considered on two grounds that every day must be accounted for which the Applicant and the reason for delay must be sufficient.*

Accounting for the delay in this matter, Mr. Mwakajinga submitted that, the judgment in which extension of time is sought to have it challenged after filing the Notice of Appeal was delivered on 13/02/2013, Notice of appeal filed on 01/07/2019 and the appeal filed in the Court of Appeal. He submitted, the said Notice was struck out on 21/06/2022, by the Court of Appeal on the reasons that it was filed out of time, before the applicant acted promptly to file the present application. According to Mr. Mwakajinga, the applicant has accounted for the delay of each day, entitling this Court to grant him extension of time as prayed, since this respondent will not be prejudiced any how if grant of the application is made, unlike the applicant who stands to suffer irreparable loss. He therefore implored this Court to grant the application.

I have taken time to consider the submission by the applicant as well as perusing the affidavit in support of the application. It is Mr. Mwakajinga's contention that, the applicant has managed to account for the delayed days. Undoubtedly, the judgment sought to be impugned if extension of time to file Notice of Appeal to the Court to Appeal is granted to the applicant was handed down on 13/02/2013 as per the judgment annexed to the affidavit and the Notice of appeal filed on 01/07/2019, more than six (6) years of the

date of judgement as per paragraph 3 of the affidavit before the same was struck out for want of Notice which was filed out of time. The filing of the said Notice of Appeal out of time for such inordinate period of time is attributed to the applicant's ignorance of the law on the requirement of the Court of Appeal Rules and his failure to be legally and properly advised. It is the law that, ignorance of law is not an excuse in accounting for the period delayed. As to whether ignorance of law constitutes good cause for extension of time the Court of Appeal in the case of **Hamimu Hamis Totoro @ Zungu Pablo and 2 Others Vs. R**, Criminal Application No. 121/07 of 2018 (CAT-unreported) had this to say:

*"... the issue is whether ignorance of law constitutes a good cause for extension of time. There is a plethora of authorities to the effect that ignorance of law has never been a good cause for granting extension of time."*

As ignorance of law is not good cause for grant of extension of time and in this matter since the applicant has failed to account for the inordinate delay of more than six (6) years in issuing the Notice of appeal, before the appeal was struck out and the filing of this application on 22/07/2022, I find no good cause has been demonstrated by the applicant warranting this Court grant the extension as prayed.

In the event the application is devoid of merits and the same is hereby dismissed without costs.

It is so ordered.

DATED at Dar es salaam this 05<sup>th</sup> April, 2023.



E. E. KAKOLAKI

**JUDGE**

05/04/2023.

The Ruling has been delivered at Dar es Salaam today 05<sup>th</sup> day of April, 2023 in the presence of Mr. Humphrey Mwakajinga, advocate for the applicant, Mr. Barnabas Luguha, advocate for the respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

05/04/2023.



