

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MWANZA SUB-REGISTRY**  
**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 18 OF 2023**

*(Arising from a Misc. Civil Application No. 06 of 2022 of Bukombe District Court,  
Originating from civil case No. 35 of 2022 of Ushirombo Primary Court).*

**MUSSA MASANJA----- APPELLANT**

**VERSUS**

**MATABE MINING CO-OPERATION & OTHERS-----RESPONDENT**

**RULING**

*Last order: 06.04.2023  
Ruling date: 18.04.2023*

**M. MNYUKWA, J.**

The applicant filed this application by way of chamber summons supported by an affidavit deposed by Mussa Masanja the applicant herein. The instant application is brought under section 25(1)(b) of the Magistrate Courts Act Cap. 11 RE: 2019. The applicant seeks this court to extend the time to appeal before this court out of time against the decision of the Bukombe District Court which was delivered on 24.10.2022.

By the order of this court the matter proceeded by the way of oral submissions whereas at the hearing, the applicant afforded the service of Salim Fundikira, learned advocate and the respondent was represented by Mr. Mwakatima Francis, learned advocate.

Submitting first, the applicant's learned counsel prays the court to adopt the applicant's affidavit and form part of his submissions. Referring to paragraph 4 of the applicant's affidavit, he avers that the applicant has a genuine reason for the delay. In accounting for the days of delay he stated that, after the impugned decision which is subject to appeal was delivered in 24.10.2022, the applicant was convicted vide criminal case No. 227/2022 and sentenced to 2 months imprisonment which he served at Chato Prison as reflected in annexure KCA 3. He went on that, after he was released on 08.12.2022, he suffered from ulcers and that he was attending at Bukombe District Hospital as seen on annexure KCA4. He went on that, due to his illness and his old age as shown on annexures KCA4 and KCA2, he delayed filing the application as the same was filed on 06.02.2023

He went on that, sickness is one of the reasons for the extension of time referring to the case of **Alasai Josiah (Suing by his Attorney Oscar Sawuka) vs Lotus Valley Limited**, Civil Application No. 498/12 of 2019, where the court consider sickness as a reason for the extension of time. He went on to pray the court to grant the application.

Responding, Mr. Mwakatima Francis opposed the applicant's application. He avers that, granting extension of time is within the court's discretion. However, there are criteria for the court to consider before



exercising its discretional power to grant extension of time. The criteria among others includes the duty of the applicant to account for every day of delay, the delay should not be inordinate, the applicant must show due diligence or have to show that there is illegality in the impugned decision as stated in the case of **Lyamuya Construction Company Limited vs Board of Registered Trustee of Young Women Christians Association of Tanzania**, Civil Application No. 02 of 2010.

Referring to our application at hand, he avers that the applicant failed to account for each day of delay in his affidavit. He insisted that, the applicant did not account from 18.12.2022 when he was released from prison to 03.01.2023 and did not state what prevented him from filing the application. He went on that, the applicant did not account from 12.01.2023 to 06.02.2023.

Reacting on the issue of sickness he claims that, annexure KCA4 did not show whether the applicant was hospitalised. He went on insisting that, since the applicant was represented by the advocate at Bukombe District Court, at the time when he was sick, he could have instructed his advocate to file the appeal within time. He went on that, the cited case by the applicant is distinguishable since in the cited case of **Alasai Josiah (Suing by his Attorney Oscar Sawuka)** (supra), the applicant suffered from serious psychological tension and trauma due to his age and

therefore it was his conclusion that the applicant failed to give sufficient reasons and therefore prays the application to be dismissed.

Re-joining, the applicant learned counsel maintained his submissions insisting that, the applicant was imprisoned and he was not at the position to instruct the advocate. He insisted that, since it is a discretion of the court to grant extension of time as stated in the cited case of **Lyamuya Construction Company Limited** (supra), he therefore prays this court to use its discretion and grant the application.

I have given careful consideration to the arguments for and against, advanced by the applicant's as well as the respondent's learned counsels and the central issue for consideration and determination is whether sufficient reason has been advanced to warrant the extension of time sought by the applicant.

It is an established principle that the decision to grant or not grant an order of extension of time is within court discretion and that discretion should be exercised judiciously supported by logical, valid, authentic and sound reasoning as it all depends upon a party seeking an order to adduce sufficient reason(s) that prevent him from doing what he was supposed to do within time. There is a surfeit of legal authorities in this respect. In the case of **Benedict Mumelo vs. Bank of Tanzania** Civil Appeal No. 12 of 2002 the Court of Appeal of Tanzania decisively held;



*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

I have revisited the applicant's affidavit and going through into his submissions to find out what transpires to this application. Going to the records, I find this application is filed on 06.02.2023 and the impugned decision which is subject to appeal was delivered on 24.10.2022.

On top of the stated principle, it is trite law that the applicant has to account for every day of delay to justify the grant of the application by the court. This stand was taken by the Court of Appeal which I am bound to follow in the case of **Dar es Salaam City Council v Group Security Co. Ltd**, Civil Application no 234 of 2015 CAT at Dar es Salaam where it was stated that:-

*"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for each day of delay."*

In fact, countless authorities of the Court of Appeal emphasized on the applicant to account for each day of delay. Going to the application at hand, the applicant's affidavit narrates a chain of events that caused his delay. In paragraphs 6 to 9, the applicant shows that he was imprisoned

and annexed proof of his assertion which is KCA2. He was then released and was receiving treatment at Bukombe District Hospital as referred in Annexure KCA4. In the circumstance of this case, the applicant who is an adult aged 70 years old as stated on annexure KCA4 and who was diagnosed with Peptic ulcer and received treatment from 03/01/2023 to 12/01/2023 managed to show that he was suffering from ulcers by that time which prevented him from lodging his appeal within time.

The issue of the sickness of the applicant is also proved by Annexure KCA2 where by in the mitigation, the applicant prayed for lesser sentence on the reason that he was sick from ulcers and tuberculosis. Therefore, it is my firm view that during the time where the applicant was sick, could not be in a position to engage an advocate to file the appeal, and that after recovery is when he finds an assistance to prepare the present application that's why he delayed to file the appeal before this court.

Additionally, the applicant also managed to show that while he was at a statutory time to file his appeal he was imprisoned, the fact which was not disputed by the respondent's counsel and as I have indicated earlier on, the same was proved by Annexure KAC4. I therefore, find that the chain of the events is justifiable as a good cause to move the court to use its discretionary power to grant the prayer sought.



Consequently, I hold that the applicant did give sufficient reasons for this court to exercise its unfettered discretion to extend time to file his appeal out of time as prayed. I, therefore, proceed to grant the application by giving the applicant fifteen (15) days from today to lodge his appeal before this Court.

It is so ordered.



  
**M.MNYUKWA**  
**JUDGE**  
**18/04/2023**

**Court:** Ruling delivered on 18<sup>th</sup> April 2023 in the presence of the applicant and his counsel.

  
**M.MNYUKWA**  
**JUDGE**  
**18/04/2023**