

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. CIVIL APPLICATION NO 40 OF 2022

(Originating from High Court Civil Appeal NO 6 of 2022)

MOHAMED KASOBI NYONGA APPLICANT

VERSUS

AZIZI MAGAMBO RUBALE RESPONDENT

RULING

29th & 31st March, 2023

F. H. Mahimbali, J.:

The issue for consideration in this application for extension of time is whether there has been a good cause explained by the applicant for the grant of the prayer for extension of time to file leave to appeal to the Court of Appeal as per law.

On 17th August, 2022, this court (Mtulya, J) in Civil Appeal case no 6 of 2022, partly allowed the appeal by varying the amount of general damages awarded but substantially dismissed the appeal for want of merit.

The applicant seems to have been dissatisfied by that verdict and as a matter of law filed his Notice of Appeal the Court of Appeal on 1st day of September, 2022 (two weeks later). Thereafter, there was silence on his part.

Alleging that he was sick, through this application which is filed under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019, (on 30/11/2022) the applicant prays that his application be granted as he was sick, thus failed to file the application for leave timely as per law.

In his affidavit in support the application, the main reason as to why this application be considered is sickness. He says under paragraph 4 of his affidavit support of his application:

"That since 1st day of September, I felt sick and I could not lodge application for leave to appeal to the Court of Appeal despite the fact that I issued Notice of Appeal which was served to the respondent. Photocopy of Notice of Appeal and documents supporting my sickness is attached here with and marked "A" forming part of this application.

The said application has been contested by the respondent on the basis that there is no proof of the said sickness and that the applicant has

failed to account other days after his treatment from Bugando Medical Centre as what was he is doing in each day of his delay (i.e from 5th October, 2022 when he last visited Hospital to 30th November, 2022 when he lodged this application).

During the hearing of the application Mr. Makongo learned advocate represented the applicant whereas Mr. Emmanuel Gervas also learned advocate represented the respondent.

I have keenly examined the chamber application, the supporting affidavit and the affidavit in reply in the light of the contending submissions of the learned counsel for the parties. The sticking question is whether there is a good cause warranting enlargement of time prayed for.

At first, I should state that the discretion of the court for enlarging time under section 11 (1) of the Cap 141 is wide-ranging. However, it is only exercisable judiciously upon reason rather than arbitrarily, Capriciously, on whim or sentiment.

Some considerations that have been consistently taken into account by the court in determining if "good cause" has been disclosed, sickness is one of them. In fact, what constitutes good cause the list is not exhaustive

however, factors such as length they delay, the reasons for the delay, diligence, illegality of sufficient importance have been considered by this court and the Court of Appeal as amongst good causes (see case as **Dar es Salaam City council vs Jayantilal P. Rajani**, Civil Application No 27 of 1987, **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil Application No 6 of 2001, **Eliya Anderson vs Republic**, Criminal Appeal no 2 of 2013, **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010, **Asha Juma Mansoor and 9 others vs John Ashery Mbogoni**, Civil Application No 192/03 of 2020. **Osward Msatu Mwizambi vs Tanzania Fish Processing Ltd**, Civil Application No 13 of 2010).

I am aware that sickness is one of the grounds constituting "good cause" warranting extension of time. However, for one to prop on that, has clearly to explain how the said sickness prevented him from filing the said application timely. If that is done, then it constitutes sufficient cause. But a mere mentioning that one attended Zonal Referral Hospital on 13/9/2022, 14/9/2022, 5/10/2022, by itself is not sufficient cause. The affidavit must

have sufficiently explained how by that sickness and hospital attendance prevented the applicant from taking the appropriate legal measures he was obliged to do.

In the instant application, assuming that the said applicant was dully sick and that was so prevented to take the said legal steps timely as alleged on the said dates i.e from 13th September 2022 to 5th October, 2022, what then was he doing in respect of this case as from 6th October, 2022 to 29th November, 2022 until when he filed this application on 30th November, 2022?

In the case of **Osward Masatu Mwizarubi vs Tanzania Fish processing Ltd**, Civil Application NO 13 of 2010 the court stated that:

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

On this position, see also the decision of the Court of Appeal in the case of **Asha Juma Mansour and 9 others vs John Ashery Mbogoni** (supra). Applying the essence of the above – mentioned cited decision, in the instant matter, what transpired in between (thereafter) up to to the

time of filing the current application are not dully explained in the paragraphs of the relevant affidavit. Failure to account for each day of delay makes this application unfit for consideration. The court needs not entertain laxity or apathy exhibited by the applicant. See for example the cases of **Hemedi Ramadhani and 15 others vs Tanzania Haibours Authority**, Civil Apepal No 63 of 2001 and **AMI (Tanzania) Limited vs OTTU on behalf of P.L Assenga and 106 others**, Civil Appeal No 54 of 2008).

All this considered and done, the current application has not exhibited the sufficient grounds for its grant.

However, I agree with Mr. Makongo, learned counsel for the applicant that the respondent's affidavit on jurat of attestation is defective as shows that the applicant who is a Muslim was sworn instead of affirming. Nevertheless, under section 9 of the Oaths and Statutory Declarations Act, Cap 34 R. E. 2019, provides that where in any judicial proceedings an oath or affirmation has been administered and taken, such oath or affirmation shall be deemed to have been properly administered or taken, notwithstanding any irregularity in the administration or the taking thereof, or any substitution of an oath for an affirmation or of an

affirmation for an oath, or of one form of affirmation for another. That said, Mr. Makongo's argument though valid but strictly, does not make the said affidavit ineffective just because there is that little challenge on the manner the said oath was administered to the applicant who is mostem instead of an affirmation.

In totality, the application for extension of time for filling an application for leave to appeal to the Court of Appeal is unmerited. The same is hereby dismissed with costs.

DATED at MUSOMA this 31st day of March, 2023.




F. H. Mahimbali

Judge

Court: Ruling delivered this 31st day of March, 2023 in the presence of Mr. Gervas learned advocate for the respondent, the applicant being absent.


F. H. Mahimbali

Judge