

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISC. CIVIL APPLICATION NO. 02 OF 2023

(Arising from Civil Case No. 07 of 2021 in the District Court of Njombe at Njombe)

BETWEEN

SAMSON MBAYA.....APPLICANT

AND

YONA DAUDI MSAMBWA.....RESPONDENT

RULING

Date of Last Order: 20/04/2023

Date of Ruling: 05/05/2023

A.E. Mwipopo, J.

Samson Mbaya, the applicant herein, sued Yona Daudi Msambwa, the respondent herein, in the District Court of Njombe at Njombe for breach of contract. The applicant sold five (5) acres of trees to the respondent to harvest timber on consideration of payment of 15,000,000/= shillings. The applicant alleges that the respondent did not pay the purchase price as was agreed in the contract. The applicant prayed to the trial Court for the order for the respondent to pay shillings 15,000,000/= plus 18% interest as a

purchase price, shillings 6,000,000/= the cost of making follow-up for payment, payment of general damages and cost of the suit. After hearing the evidence from both sides, the trial District Court dismissed the case for want of merits in its judgment dated 26.10.2022. The applicant was not satisfied with the decision, and on 30.01.2023, he filed the present application for an extension of time to file the appeal out of time. The application was filed by chamber summons supported by the applicant's affidavit. The respondent filed a counter affidavit in opposition to the application.

When the application came for hearing, both parties enjoyed the service of advocates. Advocate Chuwa represented the applicant, whereas Advocate Njiwa represented the respondent. The Court invited counsel for each side to make their submission.

It was the applicant's submission that the judgment of the trial District Court was delivered on 04.11.2022 by Hon. Mlowe, SRM. The applicant was not satisfied with the trial court's decision and intended to appeal, but he failed to file the appeal within time because of illness. The applicant could not appear on the date of judgment because of the same reason of sickness. The applicant suffered from back pain and got treatment at Kigamboni

District Hospital in Dar es Salaam Region. The hospital did diagnose him with severe back illness and instructed the appellant to have three months of bed rest, as seen in the letter from the hospital, which was attached to the affidavit. The applicant followed the doctor's instruction of having three months of bed rest. After he was better, he filed this application on 30/01/2023. It is a fundamental principle of the law as provided by S. 14(1) of the Law of Limitation Act that a person who intends for the Court to extend the time to file a suit must have reasonable cause for the delay. The sickness is a reasonable and sufficient cause for his failure to appeal within time.

In the case of **Mwana Mohamed vs. Ilala Municipal Council**, Misc. Land Case Application No. 12 of 2020, High Court Land Division, the Court held that a party must feel unwell and decide to rest. It is not a requirement of the law that he has to prove by medical documents that he was sick. In **Sophia Ramadhani vs. Mohamed Juma Sudi**, Misc. Land Case Application No. 77 of 2021, High Court Land Division at Dar es Salaam; (unreported), the Court held that sickness is a condition experienced by the sick person. It is not a shown experience. It is the ill person who can express their condition whether they have the strength to move, work and do whatever kind of work he is required to do.

The Court of Appeal state what is a good cause in the case of **Tusekile Duncan vs. Republic**, Criminal Appeal No. 202 of 2009, Court of Appeal of Tanzania at Mbeya, (unreported). The reasons stated are reasonable and sufficient for this Court to extend the time to file an appeal out of time. If the Court grants this application, the respondent will not be affected.

In his response, the counsel for the respondent opposed the application. His submission was that section 14(1) of the Law of Limitation Act mandates this Court to extend the time for filing any suit with sufficient cause. It is this Court's discretion, as stated in the case of **Kalunga Advocates and Company Ltd vs. NBC (2006) TLR 235**. In this case, there is no sufficient cause for this Court to extend the time to file an appeal out of time. In the applicant's affidavit, the reason for the delay in filing the appeal within time is illness, as shown in paragraph 7 of the affidavit. The attached document to prove the illness is the letter written on 20.10.2022. The letter, which has the Kigamboni Municipal Council emblem, does not show the title of the maker of the letter. The said letter predicts the condition of the applicant for three months later. The question is how the letter maker knows the applicant's condition after three months.

In the 6th paragraph of the affidavit, the applicant deposed that he was attending the clinic on several days. It was expected for the hospital report to be written after completing the applicant's treatment. There is no explanation for where the applicant was and what he was doing from 1st January 2023 to 29th January 2023. What is seen in the record is that on 30th January, 2023, the applicant filed the present application for an extension of time. It is a settled principle that in the application for an extension of time, the applicant has to account for each day of the delay. The position was stated in the case of **Sebastian Ndaula vs. Grave Rwamafa (Legal Personal Representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014, Court of Appeal of Tanzania, which was cited in the case of **Elias Kahimba Tibanderana vs. Inspector General of Police and A.G**, Civil Application No. 338/01 of 2020, Court of Appeal of Tanzania at Dar es Salaam, (unreported).

This application was filed on 30.01.2023, but the time to file an appeal ended on 02.02.2023. Under item No. 1 of part II of the schedule to the Law of Limitation Act, a Civil Case whose period of appeal is not provided by any law is 90 days. The appeal, in this case, is not provided by any law. As a result the appeal was supposed to be filed within 90 days. Allowing this application will prejudice the respondent as he has to incur costs for

engaging an advocate in the appeal. All cases cited by the applicant are distinguishable from the present case as the applicant was negligent in this case, while the applicant was diligent in the cited cases.

In his rejoinder, the counsel for the applicant said the letter from Kigamboni Municipal Council stated that the applicant has to be on bed rest for three months, from 20.10.2022, three months ended on 20.1.2023. Thus, this was when the applicant became well, and he could make a follow-up, including instructions to the advocate to prepare this application. The applicant was sick from 20.10.2022 when the judgment was delivered. From 20.10.2023, the applicant did look for the advocate, prepared this application and filed it in Court. As a result, there is no delay in filing this application whatsoever. The said letter is an expert opinion with a stamp showing the author's title. The case before the trial District Court is an ordinary civil suit in which an appeal has to be filed within 45 days. From 04.11.2023, 45 days expired before he fully recovered in January, 2023.

The only issue for determination from the submissions in this case is whether the application has merits.

This application for an extension of time is made under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2022. The section provides that:-

"14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

The Court of Appeal stated the exact position in the case of **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania at Tanga, (Unreported). From the above-cited provision, it is settled that the Court has the discretion to grant an application for an extension of time for a reasonable or sufficient cause. The reasonable or sufficient cause depends upon relevant material provided by the party seeking an extension of time to move the Court to exercise its discretion. The good cause must be determined by reference to all the circumstances of each particular case. [See. **Oswald Masatu Mwizarubi vs. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania]. In the case of **Dar Es Salaam City Council vs. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), it was held that:

"What amounts to sufficient cause has not been defined. From decided cases, several factors have to be considered, including whether or not the application has been brought promptly. The absence of any explanation for the delay and lack of diligence on the applicant's part."

In this application, the applicant's reason for the delay in appealing to this Court within time is that he was sick from 20.10.2020, and he was given three months of bed rest which ended on 20.01.2023. He averred that he acted diligently by filing this application on 30.01.2023, ten days after the time for bed rest had expired.

This Court is aware that sickness is a good cause for the delay in filing a matter within the given time. The exact position was stated in the case of **Fredrick Mdimu vs. Cultural Heritage Ltd**, Revision No. 19 of 2011, High Court Labour, Division at Dar Es Salaam, (Unreported); and in **Frank Mngoma vs. Everina Yakobo**, Misc. Land Application No. 35 of 2019, High Court of Tanzania, at Tanga, (Unreported). However, the said sickness is supposed to be explained and must be the actual reason which stalled the applicant from filing the intended appeal in this Court within time. In the case of **Shembilu Shefaya vs. Omari Ally [1992] TLR 245**, the Court of Appeal rejected an extension of time based on sickness because the applicant failed to provide a thorough explanation regarding the sickness.

The Court of Appeal was of the view that the application does not give an elaboration of the sickness.

The applicant's counsel submitted that the applicant was sick and was given three months' bed rest by Kigamboni District Hospital from 20.10.2022, which ended on 20.01.2023. However, this contradicts what the applicant has deposed in his affidavit. In paragraphs 5, 6 and 7 of the affidavit, the applicant stated that he was suffering from backbone pain with lower limbs numbness from October, 2021 until the end of December, 2022. He was hospitalized severely, and he attended clinic every week. The doctor recommended that he should have total bed rest. The applicant's deposition in the affidavit shows that by December, 2022, the appellant was in good health. This evidence contradicts the applicant's submission.

Further, the applicant's submission contradicts the substance of the letter alleged to be written by the Medical Officer in charge of Kigamboni District Hospital, which was attached in the applicant's affidavit as annexure "B" to support the aversion that he was hindered from filing the appeal by sickness. The said letter is a photocopy. It is not the original letter. It was written on 20.10.2022 and states that from 20.10.2022 up to December, 2022, the applicant was not able to work due to sickness, and it kept him on

bed rest for three months. The letter shows that the applicant could not work from October to December, 2022. This means in January, 2023, the applicant was well, and he was able to work. The letter does not state that the applicant was advised to take three months of bed rest, as it was alleged in the applicant's affidavit, but it says that the sickness kept him on bed rest for three months. It raises doubt about how the letter, written on 20.10.2022, knew what happened to the applicant three months later. It was expected for the letter to give information about what happened by 20.10.2022 when it was written. The information in the letter is incorrect, and this Court believes that the letter is unreliable.

The law is settled that in the application for an extension of time, the applicant is supposed to account for every day of the delay. See. **Tanzania Ports Authority vs. Pembe Flour Mills Ltd, Civil Application No. 49 of 2009**, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported); and **Azizi Mohamed v. Republic, Criminal Application No. 84/07 of 2019**, Court of Appeal of Tanzania, at Mtwara, (Unreported)].

In the case of **Said Nassor Zahor and Others v. Nassor Zahor Abdallah El Nabahany and Another**, Civil Application No. 278/15 of 2016, Court of Appeal of Tanzania, (unreported), it was held that I quote;

"...any applicant seeking extension of time is required to account for each day of delay."

From above cited cases, the applicant was supposed to account for each day delayed in filing the appeal in this Court after his recovery from sickness in December, 2022.

The applicant deposed in his affidavit that he was well and could work by December, 2022. The same facts are found in the letter from Kigamboni District Council, which I found earlier herein to be unreliable. The record shows that the judgment of the trial District Court was delivered on 26.10.2022 in the presence of advocates for both parties. The case was an ordinary civil suit, as the cause of action was a breach of contract. It means that the applicant was supposed to file the appeal within 45 days. Since the judgment was delivered on 26.10.2022, 45 days ended on 01.12.2022.

Meanwhile, the applicant deposed that he was well in December 2022. Assuming it was on 31.12.2022 (the last day of December, 2022) when the applicant recovered and could work, he was supposed to account for each of the days delayed from 01.01.2023 to 29.01.2023 when he filed the present application for an extension of time. Unfortunately, there is no explanation for the delays provided by the applicant. In such circumstances, the

applicant's reasons for this Court to extend the time to file the intended appeal are insufficient.

Therefore, the application has no merits, and I hereby dismiss it with cost. It so ordered accordingly.

A handwritten signature in blue ink, appearing to be "A. E. Mwipopo", is written over the printed name and title.

A. E. Mwipopo

JUDGE

05/05/2023