

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

*(Arising from District Court of Muleba in Civil Appeal No. 6/2021 Originating from  
Civil Case No. 70/2017 of Muleba Urban Primary Court)*

**RESPIKIUS DAUDI..... APPLICANT**

**VERSUS**

**EVODIUS SALVATORY..... 1<sup>ST</sup> RESPONDENT**

**JOHNELIKA JEREMIA..... 2<sup>ND</sup> RESPONDENT**

**RULING**

29<sup>th</sup> May and 14<sup>th</sup> June, 2023

**BANZI, J.:**

This is a ruling in respect of an application for extension of time to file appeal against the decision of the District Court of Muleba in Civil Appeal No. 6 of 2021. The application is brought under the provisions of section 25 (1) (b) of the of the Magistrates' Courts Act [Cap. 11 R.E. 2019] ("the MCA") and it is supported by an affidavit of the Applicant. The 1<sup>st</sup> and the 2<sup>nd</sup> Respondents through counter affidavit of Advocate Remidius Mbekomize opposed the application.

At the hearing, the Applicant appeared in person unrepresented while Mr. Derick Zephurine, learned counsel represented the Respondents. The

Applicant began his submission by adopting his affidavit to form part of his submission. He further submitted that, after delivery of the decision of the District Court on 5/11/2021, he was advised to apply for revision which he filed on 25/3/2022 but the same was dismissed for being filed out of time. Thereafter, he followed up copy of ruling and after being supplied, he filed this application. According to him, he delayed to file the appeal because he was following up the copy of ruling. In that view, he prayed for the application to be granted in order to pursue his right.

In reply, Mr. Zepherine also adopted the counter affidavit of Advocate Mbekomize to form part of his submission. Furthermore, he submitted that, the Applicant has failed to establish sufficient cause for the delay. He did not account for each day of the delay as the decision he intended to challenge was made on 5/11/2021, but it took him 140 days to file the revision. Also, from the moment his revision was dismissed, it took him 52 days until he filed this application. Besides, he did not attach any letter to substantiate his claim that, he was following up the copy of order. Under these circumstances, the Applicant cannot rely on technical delay and all these demonstrate negligence on his part. He cited the case of **Vedastus Raphael v. Mwanza City Council and Two Others**, Civil Application No.

594/08 of 2021 CAT (unreported) to buttress his point on failure to account for each day of the delay. He concluded his submission by praying for the application to be dismissed with costs because there is no illegality in the impugned judgment and the Applicant has failed to establish the cause for the delay.

In his short rejoinder, the Applicant insisted that, he didn't file this application after 52 days because after the revision was dismissed on 5/9/2022, on 8/9/2022 he came to this court to collect copy of order but the same was not ready. On 11/9/2022 and 26/9/2022, he returned to court but the copy was not ready and it was until 29/9/2022 when he was supplied with that copy. 29 days thereafter, he filed this application. Therefore, he reiterated his prayer for the application to be granted.

Having carefully examined the affidavits, the record as well as the rival arguments of learned counsel for both sides, the main issue for determination is *whether the Applicant has established sufficient cause to warrant this court to grant extension of time.*

Section 25 (1) (b) of the MCA provides that:

*"(1) Save as hereinafter provided—*

*(b) in any other proceedings any party,*

*if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired."*

According to the provisions above, this court is vested with discretion to extend time. However, it is a settled principle that, such discretion is exercised when the applicant has established sufficient cause for the delay. In the case of **Benedict Mumello v. Bank of Tanzania** [2006] 1 EA 227 it was stated that:

*"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."*

There is no hard and fast rule on what amount to sufficient cause but there are several factors to be taken into account before granting or refusing to grant extension of time. These factors were developed by case laws and they include the length of delay; the reasons for the delay; the degree of

prejudice that the respondent may suffer if the application is granted; whether or not the application has been brought promptly; lack of diligence on the part of the applicant; the applicant must account all the period of delay; the delay should not be inordinate and existence of point of law such as illegality of the decision sought to be challenged just to mention a few. See unreported decisions on the Court of Appeal of Tanzania in the cases of **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Civil Applications No. 4 of 2009 and 8 of 2008, **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, civil Application No. 2 of 2010, **The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe and Others**, Civil Application No. 191 of 2019, **Tanga Cement Company Limited v. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001, **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016, **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Application No. 138 of 2016 and **Sebastian Ndaula v. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014.

Reverting to the matter hand, in paragraph 7 of the affidavit, the Applicant alleges that, from 5/11/2021 when the judgment of the first appellate court was pronounced to 5/9/2022 when the High Court made its ruling, is a technical delay as he was contesting the decision of the District Court whereas, the period from 5/9/2022 until the date of filing this application, he spent following up the typed judgment and preparation of this application. I am very much aware of the principle of technical delay which is the period spent by party in courts in pursuit of his right. However, distinction must be drawn between actual delay and technical delay. It is undisputed that, the period between 25/3/2022 when the revision was filed and 5/9/2022 when it was dismissed constitutes technical delay which should not be blamed on the Applicant. But, the period from 5/11/2021 when the decision of the District Court was delivered, to 25/3/2022 when the Applicant filed his revision before the High Court constitute actual delay on which the Applicant was supposed to account for. However, the Applicant in his affidavit has failed to account for this period of four months and twenty days. The requirement to account for even a single day was underscored in the cases of **Wambele Mtumwa Shahame v. Mohamed Hamis** (*supra*), **Vedastus Raphael v. Mwanza City Council and Two Others** (*supra*) and **Sebastian Ndaula v. Grace Rwamafa** (*supra*).

Likewise, there is another actual delay from 5/9/2022 when the revision was dismissed to 27/10/2022 when this application was filed on which the Applicant alleges to spend on following up typed judgment and for preparation of this application. However, in his affidavit, the Applicant did not state when he was supplied with the copy of dismissal order. Besides, he did not attach anything to substantiate his claim that he was making follow up of the copy of the said order. Assuming that, he was supplied on 29/9/2022 as contended in his submission, but still, it took him almost one month to file the application at hand. This in itself does not establish promptness and his action demonstrates lack of diligence on his part. It was stated in the case of **Vedastus Raphael v. Mwanza City Council and Two Others** (*supra*) the action taken by the applicant ought to be diligent without sloppiness.


Apart from that, as rightly submitted by learned counsel for the Respondents, although in paragraph 6 of the affidavit the Applicant alleges illegality in the impugned judgment, but he didn't explain further the kind of illegality contained in the impugned judgment. Even in his submission, he said nothing about such illegality. Therefore, the Applicant's contention about illegality lacks merit.

In that regard, it is the finding of this court that, the Applicant has failed to establish sufficient cause to warrant this court to grant extension of time within which to file the appeal. Consequently, the application is dismissed with costs.



**I. K. BANZI**  
**JUDGE**  
**14/06/2023**

Delivered this 14<sup>th</sup> day of June, 2023 in the presence of the Applicant in person and Mr. Derick Zephurine, learned counsel for the Respondents.



**I. K. BANZI**  
**JUDGE**  
**14/06/2023**