

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB REGISTRY OF TABORA

AT TABORA

MISC. CIVIL APPLICATION NO. 5 OF 2023

(Originating from Civil Case No. 9 of 2018 of Nzega District Court)

NZEGA TOWN COUNCIL.....APPLICANT

VERSUS

EDMUND KILEO (CHARITY HOPE LODGE).....RESPONDENT

RULING

Date: 21/6/2023 & 27/6/2023

BAHATI SALEMA, J.:

This is an application for an extension of time to file the memorandum of Appeal attached with documents from the lower court.

The application is made under section 14 (1) of **the Law of Limitation Act**, Cap. 89 [R.E 2019] and section 95 of **the Civil Procedure Act**, Cap.33 supported by the affidavit of the Applicant.

The applicant was, during the hearing represented by Ms. Esther Mlayda (Nzega Town Council). She first adopted the affidavit in support of the application and prayed for an extension of time.

In reply, the respondent's counsel Mr. Kelvin Kayaga did not contest anyhow.

Having considered the Applicant's Affidavit which is not contested by the respondent. The only ground brought for the delay is the failure to attach

the copy of the decree at the same time with the Memorandum of Appeal as the said decree was out of reach of the applicant at the time. The applicant decided to file a Memorandum of Appeal without a decree of the lower court to keep up with the limitation of time on appeal matters.

In the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at Dar es Salaam where the Court of Appeal of Tanzania listed for consideration on applications for the grant of extension of time: -

- (a) *The applicant must account for all the periods of delay*
- (b) *The delay should not be inordinate.*
- (c) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

Though no objection was raised by the respondent, reading paragraph 4 of the applicant's affidavit and guided by the above principle, I am convinced that the applicant has demonstrated sufficient cause for his delay. For that reason, I hereby find it prudent to grant the application.

No order as to costs.

Order accordingly.

A. Bahati

**A. BAHATI SALEMA
JUDGE
27/6/2023**

Court: Ruling delivered in presence of the applicant only.

A. Bahati

**A. BAHATI SALEMA
JUDGE
27/6/2023**

Right of Appeal fully explained.



A. Bahati

**A. BAHATI SALEMA
JUDGE
27/6/2023**