

**IN THE HIGH COURT OF TANZANIA
(BUKOBA DISTRICT REGISTRY)
AT BUKOBA**

CIVIL APPLICATION No. 05 OF 2023

(Arising from the District Court of Bukoba in Juvenile Civil Application No. 39 of 2021)

JACOB EMBASSY APPLICANT

Versus

GRACE GERASE RESPONDENT

RULING

27th April & 30th June 2023

OTARU, J.:

The Applicant **Jacob Embassy** was the Respondent in the original suit which was instituted by the Respondent **Grace Gerase** in the District Court of Bukoba. The Respondent had applied for custody and maintenance of three children, to whom they are parents. On 30th November 2022 the matter was decided in the Respondent's favour. Dissatisfied and intending to appeal the Applicant herein filed Application for extension of time within which to appeal to the High Court.

The Application is brought by way of Chamber Summons under Section 14(1) of the **Limitation of Laws Act** (Cap. 89 R.E. 2019) and Section 95 of the **Civil Procedure Code** (Cap. 33 R.E. 2019). It is supported by Affidavit signed by **Jacob Embassy** (the Applicant) on 2nd January 2023, attested on 11th January 2023 and filed on 13th January 2023. It is opposed by Counter Affidavit deposed by the Respondent, **Grace Gerase**.

When the matter was scheduled for hearing, both parties appeared in person and unrepresented. The Application was argued orally.

The Applicant explained the reason for his delay in filing the intended appeal as delay in receiving the impugned Ruling and sickness of his father whom he had to take to Mwanza for medical care. He prayed for the court to grant the application as prayed.

The Respondent strongly opposed the Application. She agreed that the trial magistrate was absent after the Ruling was delivered but argued that the same were ready immediately after delivery and she collected her copy within one week. She claimed that the Applicant was not being truthful, as he just did not follow up on the same. She also pointed out that the Applicant's Affidavit is to the effect that he was sick and not his parent. She insisted that the Applicant was not serious with his Appeal thus he should not be granted any extension.

In *Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women and Christian Association of Tanzania*, Civil Appeal No. 2 of 2010 (CAT Dsm) (unreported) the Court of Appeal of Tanzania provided the following guidance when considering applications for extension of time:-

'As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial and so it must be exercised according to the rules of reason and justice,

and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:

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

Power to enlarge time being within the discretionary powers of the Court it has to be exercised on sound judicial ground(s) and principle(s). Thus the crucial issue before this court is whether there is good reason for exercising that power in favour of the Applicant.

I have given careful consideration to the arguments for and against the Application herein advanced by the parties. The decision sought to be challenged was delivered on 30th November 2022 and this Application was filed on 13th January 2023, forty three (43) days after delivery of the Ruling. The 45 days provided by law expired on 15th January 2023 which is a Sunday, the Appeal should have been filed on the next following business day which would have been 16th January 2023. According to the Applicant, he was supplied with a copy of the Ruling on 15th December 2022. Whatever the case, the Applicant was still within time at the time of filing this Application.

Guided by the Court of Appeal of Tanzania in the case of **Lyamuya** (supra), it is my considered view that the Applicant having been within time, unnecessarily misdirected himself by filing this Application. Consequently, this court finds there to be a good reason moving this court to exercise its discretion to grant extension of time in favour of the Applicant.

For the reasons advanced above, this Application is allowed. The Applicant is to file his Appeal within 21 days from today.

The Applicant is to pay the costs of the Respondent in respect of this Application.


It is so ordered.

DATED at **BUKOB**A this 30th day of June, 2023.


M.P. Otaru
JUDGE

Court: Ruling is delivered in Court, in the presence of the Applicant and the Respondent, both in person.




M.P. Otaru
JUDGE
30/06/2023