

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

**SUB - REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 42 OF 2023**

*[Arising from the judgement of the High Court in Civil Appeal No. 40 of 2022 dated 12.09.2022, originating from Juvenile Court of Ilemela in Misc. Civil Application No. 11 of 2021]*

**JAMES JOSEPH LISSU -----APPLICANT**

**VERSUS**

**JENIPHER MUSSA KILAKA-----RESPONDENT**

**RULING**

*June 13<sup>th</sup> & July 6<sup>th</sup>, 2023*

**Morris, J**

Being caught up by time limitation, the applicant above is moving the court to extend time within which he has to apply for leave to appeal to the Court of Appeal. The judgement of this court intended to be appealed against is under Civil Appeal No. 40 of 2022. The said decision was given on 12/09/2022. The application is supported by the affidavit of the applicant. The respondent contests the application through her counter affidavit.

Per the record, the respondent herein applied before the Juvenile Court of Ilemela for maintenance of one G.J.J **(the child)**. The child was allegedly fathered by the applicant. The subject court ordered the applicant to pay monthly maintenance charges of Tshs. 70,000/=. The applicant became aggrieved. He unsuccessfully appealed to this court. Undoubtedly, he is still aggrieved. But he cannot seek appropriate remedy for he did not take the necessary steps timely; hence, this application.

In his affidavit, the applicant states that he was given a copy of the judgement on 20/9/2022. He then made follow-ups to secure a legal assistant. Hence, he planned to meet and instruct the lawyer for eventual steps on 26/9/2022. However, meanwhile he fell sick on 25/9/2022 as a result of which he was hospitalized at AICT- Makongoro Health Centre up to 28/9/2022. Upon his recovery, he filed an application for extension of time (Miscellaneous Civil Application No. 115 of 2022) which was withdrawn on 16/02/2023. He successfully withdrew the subject application while reserving liberty to refile. So, the present application is in compliance with the previously obtained leave to refile it.



I ordered parties to argue the application through written submissions. They complied with the fixed filing schedule. The applicant was represented by Advocate Bernard M. Kaunda whereas the respondent's Advocate was Sekundi B. Sekundi. In support of the application, the applicant first adopted the affidavit as part of his submissions. Then, he submitted that the applicant has a constitutional right to be represented by advocate. Reference was made to the case of ***Pett v Greyhound Racing Association*** [1968]2 ALL ER 545 to that effect.

Further, he presented that, sickness is sufficient reason for extension of time in terms ***Director Ruhonge Enterprises v January Lichinga***, Civil Application No. 1 of 2006 (unreported). Also, it was argued further that the applicant filed the previous application which was withdrawn. According to his advocate, the applicant had sufficient cause to warrant granting the application.

In reply it was submitted by the respondent that no proof of the applicant's alleged follow-ups to be supplied with the copy of judgement. The respondent also objected the application by arguing that the withdrawn application was filed on 16/10/2022. That is, 4 days of delay were not

accounted for; 12/10/2022 being the last due date. Reference was made to the case of ***Vodacom Foundation v Commissioner General of TRA***, Civil Application No. 107 of 2017 (unreported) and reinforced that, delay of even a single day must be accounted for. In rejoinder it was submitted that all days of delay have been accounted.

Having considered the rival submissions of parties, the court is called upon to determine the question whether or not the applicant's advanced grounds suffice to support the application. It is cardinal principle of law that, in application for extension of time, the applicant must demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in the prescribed timeframe. In so doing, he/she shall discharge the obligation of proving how each day of delay justifiably passed by at no applicant's fault. Accordingly, the subject applicant will deserve a favorable Court's discretionary advantage as it was held in ***Hamis Babu Bally vs. The Judicial Officers Ethics Committee and 3 Others***, CoA-Dar es Salaam, Civil Application No. 130/01 of 2020 (unreported).

Starting with the ground that the applicant was sick, it has been held in number of cases that sickness is beyond human control and once proved,

it suffices to warrant extension of time. I subscribe to holdings in, for example, ***Alasai Josiah v Lotus Valley Ltd***, Civil Appl. No. 498/12 of 2019; ***Christina Alphonse Thomas v Saamoja Masingija***, Civil Appl. No. 1/2014 (both unreported).

In the matter at hand, it was deposed that the applicant was late to file an application for leave as he was hospitalized from 25/9/2022 to 28/9/2023. By this time, he was still in time to file the requisite application. He had about 14 days left within which to file the application for leave. Further, records reveal that he filed the notice of appeal on 11/10/2022, well, a day before the due date. Nevertheless, the application as a whole – submissions inclusive, is silent as to why the applicant failed to file the application for leave but managed to file only the said notice on time. Prudence, to me, dictates that if he was able to have the latter lodged, he should have been in the position to cause the leave to be processed as well. Timely, so to speak. Therefore, the ground of sickness lacks merit. It is overruled.

The second ground is that the applicant spent some days looking for the legal assistance. This reason need not detain me for long. The applicant



sought the alleged legal assistance while he was still in time. The affidavital depositions reveal that such undertaking was done effective 20/9/2022; and the applicant expected to meet his lawyers on 26/9/2022. The judgement of this court was delivered on 12/9/2022. Therefore, the applicant had more than 16 days to file the envisaged application. It is palpable that the applicant's right to legal representation was both earned and enjoyed. This ground is, too, feeble. I disallow it.

I now turn to the last ground: technical delay. The applicant is contending that he was prosecuting the like application before this court under Miscellaneous Civil Application No. 115 of 2022. However, it was withdrawn on 16/02/2023 with liberty to refile it afresh. The respondent, on her part, does not disputed this fact. Generally, technical delay forms a sufficient reason for extension of time.

That is, the fact that the applicant was prosecuting another application *bonafides* calls for such step to be taken into account as stated in the cases of ***Fortunatus Masha v William Shija and Another***, [199] TLR 154; ***Zahara Kitindi and Anothr v Juma Swalehe & 9 Others***, Civil Application 4/5 of 2017; ***Mathew T. Kitambala v Rabson Grayson and***



*another*, Criminal Appeal No. 330 of 2018; ***Bharya Engineering & Contracting Co. Ltd vs Hamoud Ahmed Nasor***, Civil Application No. 342/01 of 2017; and ***Salvand K. A. Rwegasira v China Henan International Group Co. Ltd***, civil reference No. 18 of 2006 (all unreported).

Therefore, the time from 16/10/2022 when the previous application was filed until 16/02/2023 when it was withdrawn are computed off. However, the instant application was filed on 29/03/2023. Neither the affidavit nor the submissions in support thereof explain how 39 days were spent after the previous application was marked withdrawn.

As correctly submitted for the respondent, it is a settled legal axiom that one applying for extension of time must account for every day of the delay. In the case of ***Hassan Bushiri v. Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court said “**Delay, of even a single day has to be accounted for** otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken”.

The foregoing pronouncement is also in ***Yazid Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & another***, Civil Application No.

412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa (legal personal representative of Joshua Rwamafa)*** Civil Application No. 4 of 2014, ***Dar es Salaam City Council vs. Group Security Co. Ltd***, Civil Application No. 234 of 2015; ***Muse Zongori Kisere vs. Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019, (all unreported).

Guided by the above authorities, in totality, I find the reasons by the applicant are not sufficient for want of account of all days of delay. The total number of delay-days not accounted by the applicant are highlighted in the discussion above. The application, thus, lacks merit and it is accordingly dismissed. The respondent will have her costs. It is so ordered. Right of appeal fully explained to the parties.



**C.K.K. Morris**

**Judge**

**July 6<sup>th</sup>, 2023**