

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 411 OF 2022**

**VICTOR JAMES BUZIBA ..... APPELLANT**

**VERSUS**

**GROUP SIX INTERNATIONAL LIMITED..... RESPONDENT**

**(Arising from the decision of this Court in Civil Appeal No. 104 of 2021)**

**RULING**

24<sup>th</sup> April and 23<sup>rd</sup> June, 2023

**KISANYA, J.:**

This is an application for extension of time to lodge an application for leave to appeal against the judgment and decree of this Court, delivered on 14<sup>th</sup> July, 2022 in Civil Appeal No. 104 of 2021. The application is brought by way of chamber summons filed on 22<sup>nd</sup> September, 2022 under section 11(1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019 (the AJA) and section 95 of the Civil Procedure Code, Cap. 33, R.E. 2019. It is supported by an affidavit duly sworn by the applicant, Victor James Buziba.

In principle, the application is based on the grounds that, *one*, the applicant was outside the country when his former counsel withdrew from representing him in the intended appeal; *two*, the applicant's former counsel

did not inform him about the outcome of this case; *three*, although the request for the copies of judgment, decree and proceedings was made on 28<sup>th</sup> June, 2022, it was until 22<sup>nd</sup> August, 2022 when the copies of judgment and decree were supplied to the applicant. The application has, however, been resisted by the respondent in the counter affidavit by her legal officer, one, Masoud Selem Masoud.

During the hearing of this application, the applicant was represented by Bitaho B. Marco, learned advocate, while the respondent had the legal services of Mr. Rico Adolph, also learned advocate. The hearing proceeded by way of written submissions.

Submitting in support of the application, Mr. Marco was alive to the position that extension of time is granted where there is sufficient cause and upon accounting for each day of delay. The learned counsel submitted that the applicant delayed to file the application due to the reasons that, he failed to engage an advocate due to financial crisis; the impugned judgment was delivered when he was outside the country; the applicant's former counsel did not inform him of the outcome of the appeal subject to this application and the fact that he made follow up of the matter and discovered that the previous

counsel had applied for the copies of judgment, decree and proceedings. It was his submission the said grounds amount to sufficient cause.

Referring the Court to section 5(1) of the AJA, Mr. Marco submitted that the applicant cannot appeal to the Court of Appeal unless this application is granted. He was of the view that the chance of winning the intend appeal is high. Citing the cases of **Samson Gabba vs Charles Kigongo Gabba** [1990] TLR 133 and **Rajabu Kadimbwa Ngeni and Another vs Idd Adam** [1991] TLR 28, he argued that the prospect of the intended appeal is considered in the applications of this nature.

The learned counsel further submitted that the applicant was deprived of his constitutional right to own property subject to this case and the right to be heard which are enshrined under Artcles 24(1) and 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977 (as amended), respectively. Relying on the provision of section 95 of the CPC and the case of **Hussein Juma vs Farouk Mohamed**, Misc. Civil Application No. 26 of 2020, he submitted that extension of time is a judicial discretion bestowed upon the court and that such power must be exercised judiciously. In conclusion, Mr. Marco urged the Court to be guided by the case of **Ngao Godwin Rosero vs Julius Mwarabu**, Civil Appeal No. 10 of 2015 (unreported), where it was held that factors for

consideration in determining application of this nature include, whether the applicant has accounted for the period of delay, whether delay is not inordinate and whether the applicant was not negligent.

Mr. Adolph objected to the application. He commenced his submission by arguing that pleading is a basis upon which the claim is found and that parties are bound by their own pleadings. To expound his argument, he cited the case of **Salim Said Matomekela vs Mohamed Abdallah Mohamed**, Civil Appeal No. 149 of 2019, **Yara Tanzania Limited vs Charles Aloyce Msemwa and 2 Others**, Commercial Case No. 5 of 2015, HCT Commercial Division at DSM (unreported) and **Makori Mganha vs Joshua Mwaikambo and Another** [1980] TLR 88.

The learned counsel went on to contend that the reason for delay on each and every day of delay was not pleaded in the supporting affidavit. On that account, he urged this Court to disregard the assertion that the applicant had financial crisis which was not stated in the affidavit. He supported his argument by citing the case of **Registered Trustees of Archdiocese of Dar es Salaam vs The Chairman, Bunju Village Government and 11 Others**, Civil Appeal No. 147 of 2006 (unreported).

Mr. Adolph further submitted that the court extends time where sufficient reason for the delay has been shown by the applicant by considered the guidelines stated in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** [2002]. Basing on the said principles, he contended that the applicant has failed to prove the elements for extension of time.

The learned counsel submitted that the ground that the applicant was out of the country was not duly proved and that in any case, the visa annexed to the affidavit shows that he was out of country for two days. It was his further contention that, since the corrected judgment was delivered on 14<sup>th</sup> July, 2022, the time within which to apply for leave to appeal lapsed on 28<sup>th</sup> July, 2022. Given the fact that the application was filed on 22<sup>nd</sup> September, 2022, he was of the firm view that the applicant had accounted for two days in lieu of two months.

Mr. Adolph further submitted that engaging an advocate is not the reason for the client's negligence in making follow up of the case. To cement his submission, he cited the case of **Benedict Masanja Maganga vs Nico Basil Sanga and Another**, Misc. Land Application No. 501 of 2020

(unreported) and **Joseph Suna vs Daud Emmanuel Mwaligida, Misc. Civil Application No. 46 of 2020** (unreported). In addition, he argued that the fact that the delay was associated with the withdrawing of an advocate without prior notice to the applicant is baseless as per maxim that "he who comes into equity must come with clean hand".

With regard to the assertion of likelihood of success of the intended appeal, Mr. Adolph argued that the cases relied upon by the applicant have been overruled by the recent case of **Airtel Tanzania Limited vs KMJ Telecommunications Limited**, Civil Application No. 393 of 2021 (unreported) where it was held:

*"For more clarity, it is no wonder that, whether "an appeal stands chances of success is no longer a requirement for granting an extension of time to appeal or, as here leave to appeal."*

The learned counsel reiterated his argument that the court is required to consider the guidelines stated in the case of **Lyamuya Construction** (supra). He thus, moved this Court to dismiss the application with costs on the ground that the applicant has no reasonable grounds.

In his rejoinder submission, Mr. Marco was mindful of the trite law that parties are bound by their pleadings. However, he was of the view that the

documents appended to the pleadings may be used to expound the evidence adduced in court. As for the contention that the applicant did not plead the reasons for his delay, the learned counsel submitted the reasons were duly stated. Citing the case of **Christmas Elimika Swai and 2 Others vs Tanzania Electric Supply Co. Ltd**, Civil Application No. 559/01 of 2018, he argued that there is not particular ground which has been set out as good cause. He further urged the Court to consider that the applicant deposed to have made follow up of the matter. In conclusion, he cited the case of **Mabroma Gold Corporation Limited vs Minister for Energy and 2 Others** [1998] TLR 325 and submitted that, the respondent will not be prejudiced if the application is granted.

As alluded to herein, this application is based on the provisions of section 11 (1) of the AJA. The said provision empowers this Court to exercise its discretion in granting an application for extension of time to apply for leave to appeal. As rightly submitted by both parties, the said discretion must be exercised judiciously and in accordance with the rules of reason and justice. In other words, the power to extend time must be according to the law and established principle.

I am aware of the fact that section 11(1) of the AJA does not provide for the factors to be considered in determining an application of this nature. However, it is a settled position of law and I need not cite any authority that, for the court to extend the time sought, the applicant must adduce good cause or sufficient reason to justify the delay. That being the position, the issue for determination is whether the applicant has demonstrated good cause or sufficient cause to justify the delay.

At the outset, I agree with the learned counsel for both parties that, factors constituting good cause or sufficient reason are not specifically stated and that they are determined basing on the circumstances of each case. The courts have been taking into account a number of factors developed by case law. In the case of **Lyamuya Construction Company Ltd** (supra) referred to me by Mr. Adolph, the Court of Appeal set out the following factors:

- a) The applicant must account for all the period of delay.*
- b) The delay must be inordinate.*
- c) Whether there is arguable case such as if there is a point of law on illegality or otherwise of the decision sought to be challenged.*



*d) The applicant must show diligence, and not apathy, negligence, sloppiness in prosecution of the action that he intends to take.*

Being guided by the above position, first for consideration is the length of delay. Pursuant of the record, the corrected judgment subject to this application was delivered on 14<sup>th</sup> July, 2022. In view of section 46 (a) of the Court of Appeal Rules, R. E. 2019, an application for leave to appeal is required to be lodged within thirty days of the impugned decision. On that account, the application for leave to appeal ought to have been lodged on or before 13<sup>th</sup> August, 2022. Given the fact that 13<sup>th</sup> August, 2022 happened to be Saturday, the time lapsed on the next working day which was 15<sup>th</sup> August, 2022. Since this application was filed on 22<sup>nd</sup> September, 2022, the length of delay is 37 days and not two months as stated by Mr. Adolph.

Next for consideration is the reasons for the delay and whether the applicant has accounted for each day of delay. This issue is premised on the position that for the provision of time limitation to have meaning, delay of even a single day must be accounted for. This stance has been reiterated in numerous cases. Some of them were referred to this Court by Mr. Adolph. In another case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil

Application No. 03 of 2007, (unreported), the Court of Appeal underlined that: -

*"...Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."*

One of the reasons stated in paragraph 9 of the supporting affidavit is to the effect that the copy of judgment and decree were availed to the applicant on 22<sup>nd</sup> August, 2022. The preceding paragraphs shows that the letter requesting for copies of judgment, decree and proceeding was submitted to this Court on 28<sup>th</sup> June, 2022. I have considered that the respondent did not prove that the copies of judgment and decree were ready for collection before 22<sup>nd</sup> August, 2022. For that reason, the applicant has accounted for the delay of up to 22<sup>nd</sup> August, 2022.

The applicant further deposed that his former counsel withdrew from representing him on 7<sup>th</sup> September, 2022. This reason was not duly proved in evidence. The applicant did not produce the letter authored by his former counsel to prove that fact.

In his submission, Mr. Marco stated that the other reasons for the delay are applicant's financial crisis due to family problem, likelihood of success of the intended appeal and illegality of the impugned decision. However, the said reasons were not deposed in the supporting affidavit. Thus, they were stated from the bar. I agree with Mr. Adolph that, in terms of the settled law, submission is not part of evidence [See the case of **Registered Trustees of the Archdiocese of Dar es Salaam** (supra)]. Considering further that both counsel were at one that parties are bound by their own pleadings, I find no need of considering the said reasons.

The last reason for the delay was averred in paragraph 6 of the supporting affidavit. It is to the effect that the applicant was outside the country when his counsel withdrew from representing him. As rightly observed by Mr. Adolph, the emergency travel document appended to the affidavit shows that the applicant was outside Tanzania from 10<sup>th</sup> September, 2022 to 13<sup>th</sup> September, 2022. Thus, from 22<sup>nd</sup> August, 2022 when he was availed with the copies of impugned judgment and decree to 22<sup>nd</sup> December, 2022 when this application was lodged in this Court, the applicant accounted for four days. The remaining period of 26 days were not accounted for. To me such delay is not inordinate.

That said and done, I take a firm position that the applicant has not demonstrated sufficient cause and accounted for each day of delay that would entitle him extension of time. Consequently, this application fails and is dismissed with costs.

**DATED** at **DAR ES SALAAM** this 23<sup>rd</sup> day of June, 2023.



S.E. KISANYA  
**JUDGE**  
23/06/2023