

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MOROGORO)  
AT MOROGORO**

**MISC. CIVIL APPLICATION NO. 45 OF 2022**

*(Arising from the Ruling of this court in Misc. Civil Application No. 494 of 2018)*

**FRANKEN KIMARO ..... APPLICANT**

**VERSUS**

**BEATRICE J. MBAGA ..... RESPONDENT**

**RULING**

*Hearing date on: 03/05/2023*

*Ruling date on: 05/05/2023*

**NGWEMBE, J:**

This application for extension of time is born out of the ruling of this court delivered by Hon. Judge S. M. Kulita, on 30<sup>th</sup> May, 2019 whereby the lady justice dismissed with costs the application for lack of merits. Having so dismissed the applicant seem to have accepted that outcome for he never took any other step towards challenging such decision. However, after lapse of three years and some months the applicant found his way to this house of justice by instituting an application for extension of time to allow him lodge notice of appeal.

The grounds for such long delay were disclosed in his affidavit. Unfortunate may be to the applicant as well as to the respondent none of them was represented in court, hence each one had limited reasoning in support and in opposition of the application.



Briefly the applicant relied on his reasons comprised in his affidavit while seeking mercy of this court to grant him more time to appeal against the dismissal of extension of time decided by judge Kulita in year 2019.

In turn the respondent opposed the application by advancing reasons that the respondent has failed to realize her court decree due to delaying tactics applied by the applicant. Lamented further that more than nine (9) years the applicant has been dragging the actual realization of her court decree. Rested by praying the application be dismissed.

Maybe I should highlight some basic principles governing time limitation in any civil or criminal dispute. Usually, time limitation is a fundamental law which is capable of denying any one's right of appeal. The law of limitation is a merciless law like a merciless sword which cut deep with no mercy to whoever trespasses to its jurisdiction. See the cases of **M/s. P & O International Ltd vs. The Trustees of Tanzania National Parks (TANAPA) (Civil Appeal 265 of 2020) [2021] TZCA 248**, and **Barclays Bank Tanzania Limited vs. Phylisiah Hussein Mchemi, Civil Appeal No. 19 of 2016 (unreported)** and **John Cornel v. A. Grevo (T)Limited; Civil Case No. 70 of 1998: -**

*"However unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those every who get caught in its web"*



In fact, the door for extension of time is a limited door which is opened slowly only to a person who has justified with reasonable cause over his delay.

Extension of time is discretionary, which as well is limited under certain circumstances, because such discretion is exercised judiciously. Under the **Black's Law Dictionary (9<sup>th</sup> Edition)** the phrase 'judicious' is attributively interpreted to mean "*Well considered, discreet, wisely and circumspect*" which also correlates with the Court of Appeal decisions in **UAP Insurance Tanzania Ltd Vs. Noble Motors Limited [2017] T.L.R. 583** and **Karibu Textiles Mills Ltd Vs. Commissioner General (TRA), Civil Application No. 192 of 2016**, where the Court construed '*judicious exercise*' of powers by the court is to make a decision with a sense of justice by judging the material facts having regard to the particular circumstances of each case.

The long unfettered standing position of the law relevant herein is that, in order for a party to be granted an extension of time to exercise any right which he failed to exercise within time as prescribed by law, that person must adduce sufficient ground and reasonable cause. Reasonable ground or sufficient cause cannot and should not be universally interpreted, but each case be taken on its own facts. The Court of Appeal in the case of **Mohamed Iqbal vs Ezrom M. Maryogo (Civil Application 141 of 2018) [2020] TZCA 1831**, among others took cognizance of this rule as it observed that: -

*"It is acknowledged that the meaning of the term sufficient cause depends on the circumstances of each case."*

Also, in the famous case of **Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian**

**Association of Tanzania, Civil Application No. 2 of 2010** it provided certain facts to be considered upon including the following: -

- (a) The applicant must account for all the period 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; and*
- (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.*

In respect to this application, I have revisited the affidavit of the applicant with a view to grasp if at all he had any valid reason for such long delay. Unfortunate, I may so say, all 8 paragraphs of his affidavit none of them has disclosed any reason leave alone valid cause for such long delay.

Notably, discretionary powers of this court are always subject to availability of reasonable cause which prevented the applicant from appealing within time limitation. Unfortunate in the absence of reasonable grounds, in terms of legal, factual and circumstances warranting consideration for extension of time, obvious the court cannot invoke its discretionary powers. Therefore, the overwhelming discretionary powers of this court is always exercised judiciously. Whoever applies for extension of time before this house of justice, should never forget his duty to demonstrate sufficient reasons on why he should be granted more time. The most persuasive reason is to show that the delay was not caused or

contributed by dilatory conduct on his part and that under the circumstance justice so demands that extension be granted. (See the case of **Shant Vs. Shi Ndocha and others [1973] E.A 207**).

There is, of course, unbroken chain of authorities on extension of time, which all meet in one point that sufficient reasons must be accorded for the court to extend time. In the case of **Kalunga & Company Advocates Vs. NBC [2006] TLR 235** the court held: -

*"Material facts or explanation must be provided which convince the court to exercise its discretion to extend time".*

The same was repeated in the case of **Shah Hemraj Bharmal and Brothers Vs. Santash Kumari W/o J.N Bhola [1961] E.A 679 at page 685**.

In this application, I have tried to find reasons for delay, but all fall short to convince my conscience that there were logical reasons for that long delay. The applicant has been unsuccessfully applying for extension of time. As was rightly so argued by the respondent, they have been in corridors of court for nine (9) years. That every time when the respondent tries to realize her decree, the applicant lodges an application for extension of time. It is evident that this court before Judge Munisi dismissed his application for extension of time for want of prosecution. In the same trend, another application was lodged before Judge Kulita who decided on merits by dismissing it for lack of merits. As if that was not enough, this time the applicant is again in this court seeking for extension of time without any probable cause after delaying for more than three (3) years.

I have dutifully considered the affidavit of the applicant together with his submissions, but sincerely I have failed to grasp a single reason for such long delay. What is the meaning of this application in a legal eye, obvious this is an abuse of court process against which this court must stand firm to defend its integrity. The term abuses of court process entails abuse of legal process; malicious abuse of legal process or wrongful process or wrongful process of law, all means improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process.

On this matter I am not travelling in a virgin land, both this court and the Court of Appeal have exhausted by providing reliable precedents. My brother judge Ismail in **Commercial Case No. 117 of 2015 between JV Tangerm Construction Co. Ltd & Another Vs. Tanzania Ports Authority and the Attorney General**, took time to discuss in tails on this matter as follows: -

*"The law is settled in this respect. It is to the effect that, courts are enjoined to ensure that they protect themselves from any possible abuse of its powers or procedures in the conduct of proceedings. They must, as a matter of implicit obligation, guard against actions of unscrupulous parties who turn the courts into a theatre for endless, repetitive and frivolous litigations, and actions which are known as an abuse of court process"*

Likewise, the Court of Appeal in the case of **Hamis Said Mkuki Vs. Fatuma Ally, Civil Appeal No. 147 of 2017** at page 33, held that, the law does not allow riding two horses at the same time because it amounts to an abuse of court process. A similar stance was also expressed in the case of **Mekefason Mandali & Others Vs. The Registered Trustees of the Archdiocese of Dar es Salaam, Civil Application No. 482/17 of 2017.**

From the above understanding, I find abuse of legal process arises when a person, while knowing that he has no claim of right over the subject matter or when he is assured that the other party has enforceable court decree but all along tries to frustrate it by repetitively making an application in court for no apparent reason. This is purely what the applicant is doing in this court.

Maybe I should briefly underscore the purpose of having time limitation in every action in a court of law. In this I need not to invent the wheel, which is already in use. The Court of Appeal in **Civil Appeal No. 19 of 2016 Barclays Bank (T) Ltd Vs. Phylisianh Hussein Mcheni** at page 13 quoted the book of C.K. Takwani writes in Civil Procedure, with Limitation Act, 1963, 7<sup>th</sup> Edition, at page 782 observed: -

*"Statutes of Limitation are based on two well-known legal maxims:*

- (i) *The interest of the State requires that there should be an end to litigation (**interest reipublicae ut sit finis litium**)*

(ii) *The law assists the vigilant and not one who sleeps over his rights (**Vigilantibus non dormientibus jura – subveniunt**)*”

Much as I fully observe with critical minds those principles, yet I am not blind on exceptional circumstances upon which, time limitation may be extended. For instance, when the applicant's delay was caused by good cause; or the delay was caused by inaction of the court in providing necessary documents; or illegalities apparent on the face of record; or in any way the delay was not caused by the applicant; the list is not exhaustive. In anyway, the good cause should exonerate the applicant from being the source of delay.

Since the applicant in this application has failed to account for such long delay of more than three (3) years, this court takes guidance of the decision of the Court of Appeal in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** where it held: -

*"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"*

This position traces its origin from the decision of Privy Council in **Ratnam Vs. Cumarasamy and Another [1964] 3 All ER 933** at page 935 observed: -

*"The rules of court must prima facie be obeyed and, in order to justify a court in extending time during which some step in procedure requires to be taken there must be some material on which the court can exercise its discretion. If the law were*



*otherwise any party in breach would have an unqualified right to extension of time which would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation”.*

In this application, as earlier alluded the applicant has been filing applications of this nature several times with the purpose of impeding the respondent from benefiting from the decree. It is on the ground above I find this application to be purely an abuse of court process and the only reward it deserves is dismissal with costs to the respondent, as I hereby do.

**Order accordingly.**

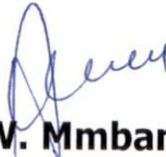


**P. J. NGWEMBE**

**JUDGE**

**05/05/2023**

**Court:** Ruling delivered in chambers on this 5<sup>th</sup> day of May, 2023 in the presence of both sides.

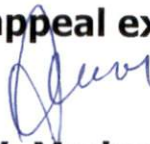


**Sgd: A.W. Mmbando**

**DEPUTY REGISTRAR**

**05/05/2023**

**Right to appeal to the court of appeal explained.**



**Sgd: A.W. Mmbando**

**DEPUTY REGISTRAR**

**05/05/2023**