

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

MISC. CIVIL APPLICATION NO. 7 OF 2023

(Arising from Misc. Civil Application No. 32 of 2022 in the High Court of Tanzania at Morogoro)

ARCHILLEUS SIGUNDALI APPLICANT

VERSUS

SALIMA AMIRI RESPONDENT

RULING

Date of last Order: 20/06/2023

Date of Ruling: 21/07/2023

MALATA, J

This is an application for extension of time by the applicant seeking leave to appeal to Court of appeal. The application is by way of chamber summons supported by an affidavit sworn by Mr. January Raphael Kambamwene learned counsel.

It is gleaned from the supporting affidavit that, the impugned decision subject to this application was delivered on 27th June, 2022 by the High Court of Tanzania at Morogoro in Land Appeal no. 47 of 2022 by Mr. Hon.

Mr. Justice Ngwembe. The applicant being aggrieved by the ruling and order he immediately lodged notice of appeal indicating his intention to appeal to the court of appeal. The Applicant wrote a letter to the registrar requesting for the certified copies of proceedings and other documents for the appeal purposes. On 15th July, 2022 the applicant lodged Misc. Civil Application No. 32 of 2022 seeking leave of this court to appeal to the court of appeal against the ruling and order delivered by Hon. Mr. Justice Ngwembe. However, due to technical reason, Misc. Civil Application no. 32 of 2022 was struck out on 30th November, 2022 for non-citation of the enabling provision of the law. The applicant now re affirms his intention to appeal to the court of appeal by seeking extension of time to refile the application for seeking leave to appeal to the court of appeal.

When this application came for hearing, the parties were represented, the applicant was represented by Mr. January Kambamwene, learned counsel while the respondent was represented by Mr. Marwa Masanda, learned counsel.

Submitting in support of the appeal Mr. Kambamwene stated that, the application for leave to appeal to the Court of appeal was struck out. The copies of ruling and drawn orders was made available to the applicant after the 4th January, 2023. This application was filed on 13th January,

2023 being one week after the ruling and order by Hon. Mr. Justice Chaba was made available.

In the present application the applicant is obliged to show good reasons for delay. These are, the struck-out application was filed timely that is on 15th July, 2022 while the judgement was delivered on 27th June, 2022, the application was required to be filed within thirty days and it was so filed.

The said application for leave was struck out on 30th November, 2022, in the line with the case of **Fortunatus Marsha vs. William Shija (1997)**

TLR 154, the time within which the matter has been in court has to be excluded due to technical delay. Having received ruling by Hon. Mr. Justice Chaba on 4th January 2023 when it was made available for collection in terms of section 19 of the Law of Limitation Act, Cap 89 R.E 2019.

The applicant spent only one week to prepare and file application, thus no inordinate delay. He referred this court in **Constatine Victor John Vs. Muhimbili National Hospital**, Civil Appeal no. 214 of 2020 where the court held that, eight days is not inordinate delay. He prayed the application to be granted.

Replying in opposition of the application Mr. Masanda learned counsel stated that, the application is supported by affidavit of Mr. January Kambamwene, learned counsel the proceeding before this court doesn't

indicate that Mr. Kambamwene did not indicate that he appeared in proceedings before Hon. Mr. Justice Chaba or Hon. Justice Ngwembe. In the case of **Tanzania Breweries Ltd vs. Herman Bildad Minja**, Civil Application no 118 of 2019 the court held that, for an advocate to swear an affidavit must have been in conduct of such proceeding and that he can swear/affirm facts to the extent of his involvement. To the contrary all averred facts in the affidavit became hearsay evidence. Mr. Masanda stated that due to that reason the application is with no valid affidavit. However, he admitted that, despite non indication that Mr. January Kambamwene participated in the said proceeding but he appeared and handled the case.

Further Mr. Masanda stated that, as to the application itself, for the court to grant prayers for extension of time there must be a good reason. In the present application, six months has passed and the applicant has failed to account for such delay. The reason for striking out the application before Hon. Justice Chaba was due to technical errors which is a result of negligence of an advocate to file an application in accordance with the law. It is strange for such error to happen as the matter was handled by advocate. It is a settled principle of law that, the negligence of an advocate is not a good ground for extension of time. To cement the point, he referred this court in **Jubilee Insurance Co. Ltd vs. Mohamed**

Sameer Khan, Civil Application no. 439/01 of 2020 at page 14 and 15 of ruling where the court held that,

".... negligence of an advocate is not good cause for extension of time, further that neither ignorance of law nor counsels mistake constitutes good cause."

As to the length of delay, as Mr. Masanda counsel stated that, the applicant's delay in filing this instant application for reason of waiting for copy of ruling by Hon. Chaba, J is far-fetched. It is evident that, he exceeded 33 days of which he is legally required to account for. He cited the case of **Alex Senkoro and 3 others vs. Eliambuya Lyimo**, Civil Appeal no. 16 of 2017 CAT, at page 12 on the last paragraph the court principled that, all critical events for reckoning the prescribed limitation period have to be established. For purposes of section 19(3) of the Law of Limitation Act, the applicant must indicate date of the impugned decision, date of requesting for the copies of ruling and judgement and the date the copies were supplied. There is no attachment of letters that the applicant applied for any copy of document from the court and that he was supplied on a certain date beyond time, thus the delay of thirty 33 days has not been accounted for. Such attachment, if any, could have indicated the series of events took place in between resulting to delay,

otherwise, there no justification for such delay in the absence of such information, he succumbed.

The period of delay is inordinate and without good reason, he thus prayed for dismissal of the application.

On rejoinder Mr. Kambamwene had submitted that, he participated to the proceedings as evidenced by the ruling attached to affidavit.

As to the second issue on the technical error which led to striking out the application that it was due to negligence, he had nothing much to counter but stated that, granting extension of time is a discretion of the court based on the sufficient reasons advanced on a case to case basis.

The length of delay has been accounted in the affidavit. The delay is just for seven days the rest has to be excluded by virtue of section 19 of the law of limitation. The absence of letter requesting for copies of decision and date of correction is not fatal.

Since the registrar has indicated that the date of issuance of drawn order is 4th January 2023, then that should be the date the documents were given to the applicant. He consequently prays that the application be granted as they advanced good cause for delay.

The issue for determination therefore is whether the applicant has shown good cause warranting this court to grant an order for extension of time.

To start with, it is not in dispute that, Mr. Kambamwene learned counsel handled the proceedings sought to be appealed, thus competent to swear affidavit in support of the application. The fact that Mr. Kambamwene participated in proceedings is well articulated in the attached ruling to the affidavit in support of the application. Therefore, the submission by Mr. Masanda that the applicant's affidavit is hearsay is far-fetched. I thus dismiss it.

Turning to the gist of this application, it is a trite Law that for the applicant to be granted the extension of time, he must advance good or sufficient cause for the delay. That is the position as per the enabling section 11 (1) of the Appellate Jurisdiction Act cited by the applicant.

*"(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving **notice of intention** to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for **leave to appeal** or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."*

The above provision makes it clear that, the court may extend time for giving notice to intention to appeal or leave to appeal if it is satisfied that, the applicant has given reasonable or sufficient cause for the delay.

In amplifying what amount to sufficient cause, the court of appeal in the case of **Regional Manager Tanroads Kagera vs. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported) stated that,

"What constitutes sufficient reason cannot be laid down by any hard and fast rules."

In that regard, the court has developed a number of factors to be taken into account in the determination of application for extension of time. In the case of **Lyamuya Construction Co. Ltd Vs. The Registered Trustees of Young Women Christian Association of Tanzania** Civil Application no. 2 of 2010 CAT (unreported), **Addija Ramadhani (binti Pazi) vs. Sylvester W. Mkama**, Civil Application no. 13 of 2018 where the court principled that;

- (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.*

(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.

(e) the degree of prejudice the respondent stands to suffer if time is extended;

In the present application, the reason for delay advanced by the applicant is technical delay. I accept that, when a person is pursuing his genuine cause in the wrong forum for the purpose of the law of limitation, can be accepted as a technical delay, which otherwise can be distinguished from actual delay.

In this position, I am guided by the principles in the case of **Fortunatus Masha Vs. William Shija and Another** [1997] T.LR 154, where the Court of Appeal had these to say: -

"Distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out the

first appeal. In this circumstance an extension of time ought to be granted."

In instant application the reason adduced by the applicant is that the delay on part of the applicant was due to technical delay. It is true that, the first application was filed timely as it was required to be filed within 30 days, however the same was struck out on 30th November, 2022. From the date when the application before Hon. Chaba, J struck out to the date of filing of this application, that is on 13th January 2023 is clear 50 days. Counting from the date of extraction of order 4th January 2023 to 13th January 2023, the date of filing the present application, it is clear nine (9) days.

The reason, for the court to struck out the application before Hon. Chaba, J is non-citation of the enabling provision of the law. Mr. Masanda stated that such an error was due to the counsel's negligence and thus it cannot constitute a good ground for extension of time.

It is a trite law that, failure of an advocate to act within dictates of the law doesn't constitute good cause for extension of time. This position of the law was stated by the Court of Appeal in the case of **Exim Bank Limited vs. Jacqueline Kweka**, Civil Application no. 348/18 of 2020 where the court said;

"In the current application, the applicant relied on the fact that her matter changed hands of the lawyers from Amicus Attorneys

*to Locus Attorneys as the main reason for not serving the respondent on time. **I am not persuaded with this reason because both firms are manned by lawyers who ought to know the court procedures. I have never come across a situation where failure to act within the detects of the law being condoned to constitute good cause for enlargement of time and I am not prepared to do so.***"

Similarly, in the case cited by the learned counsel, **William Shija vs. Fortunatus Masha** (supra) on the issue of the advocates failure to observe correct procedure the court of appeal observed;

*"In determining whether the application should nonetheless be granted the look into account that **the counsel had been negligent in adopting the correct procedure and this couldn't constitute sufficient reason for the exercise of the Court's discretion.**"*

Further, in Civil Application no. 439/01 of 2020, **Jubilee Insurance company (T) Limited vs. Mohamed Sameer Khan** the Court of appeal had these to say;

".....It should also be emphasized that the negligence of an advocate or his ignorance of the procedure, is not an excuse and does not constitute a sufficient cause for extension of time.

In Exim Bank (Tz) Ltd V. Jacqueline A. Kweka, Civil Application No 348 of 2020 (unreported) the Court Stated,
” Among other thing, that:

*“..... firms are manned by lawyers who ought to know Court procedures. In fact, **failure of the advocate to act within the detect of law cannot constitute a good cause for enlargement of time**”*

*Further, in the case of **Omar Ibrahim V. Ndege commercial services Ltd**, Civil Application No 83 of 2020(Unreported) **the court stressed that neither ignorance of the law nor counsels mistake constitutes good cause. It was further held that lack of diligence on the part of the counsel is not sufficient ground for extension of time.**”*

Steered with the above legal position of the court of appeal, in the matter, it was expected the applicant’s advocate to exercise due diligence and cite proper enabling provision of the law. Since the applicant’s counsel mistakenly or under ignorance failed to abide to the requirement of relevant law, his acts do not constitute good cause for extension of time.

As to the issue of length of delay, it was Mr. Kambamwene's submission that seven days delay is not inordinate.

The law is very clear that, in computing the period of limitation the time requisite for obtaining a copy of judgement or decree shall be excluded under section 19(2) of the Law of Limitation Act, Cap 89 R.E 2019 provides that;

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

In the case cited by Mr. Masanda, **Alex Senkoro & 3 others v Eliambuka Lyimo (as administrator of the estate of Fredrick Lyimo deceased)** [Supra], the Court of Appeal principled that, took that an exclusion of time within which a party was waiting for the certified copies of judgment, decree or order appealed against is automatic. However, the Court went on to state that;

*"We need to stress what we stated in the above case that the exclusion is automatic as long as **there is proof on the record of the dates of the critical events for the***

reckoning of the prescribed limitation period. For the purpose of Section 19 (2) and (3) of Law of Limitation Act these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of the supply of the requested document." [Emphasis added].

Going by the above decision of the Court of Appeal, the time for waiting of the copies of the judgment and decree or order appealed against is automatic but there must be proof on the record on when the said decision was delivered, when the same was requested for and when the same was supplied.

The court in the above cited cases are to the effect that the record has to speak on how the matter was dealt from the date of the impugned decision to the time of filing the application by showing the series of events.

The ruling by Hon. Chaba, J was delivered on 30/11/2022, while present application was filed on 13/01/2023, in excluding the days to obtain the copies of the ruling by Hon. Chaba J, there is a period of 35 days to be accounted for. There is no proof on the face of records of materials depicting dates of the critical events for the reckoning of the limitation

period. In addressing the point, Mr. Kambamwene stated that, since the Registrar has indicated that, the date of issuance of drawn order that should be the date the documents were given to the applicants.

In my opinion since the ruling was delivered on 30th November, 2022 and in the absence of letter requesting such Ruling and date of collection this court must assume ruling was ready on the date of delivery unless the contrary is stated by the applicant by production of letters requesting for the same and date of collection.


Additionally, either ruling or order could have sufficed to demonstrate that, there was a case filed and struck out by the same court before Hon. Chaba, J. The Ruling was ready by 30th November, 2022 as there no contrary of version from the applicant through letters requesting for it and when the same was collected.

All said and done, I am inclined to agree with the respondent that the application is with no good cause as the applicant has just demonstrated how he was negligent in handling the matter from the time it was dismissed by Hon. Ngwembe J. The above position is based on the evidence in the affidavit and legal principles by the court of appeal in the afore cited cases.

Consequently, I hereby dismiss the application for lack of merits. Each party to bear its own cost.

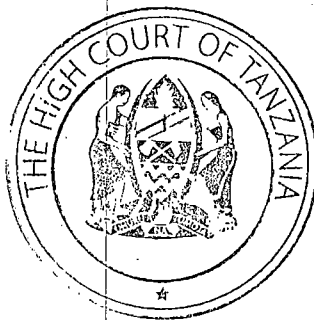
IT IS SO ORDERED

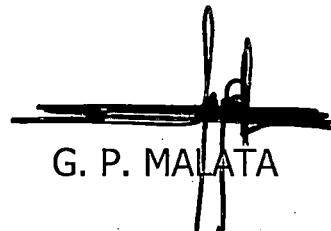
DATED at **MOROGORO** this 21st July, 2023.


G. P. MALATA
JUDGE

21/07/2023

RULING delivered in chamber at **MOROGORO** this 21st July, 2023




G. P. MALATA
JUDGE

21/07/2023