

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA DISTRICT REGISTRY**

AT TABORA

Miscellaneous Civil Application No. 09 of 2023

(Originating from Tabora District Court in Civil Case No. 10 of 2019)

HASSANI MGOMENI APPLICANT

VERSUS

1. BUKUMBI DISPENSARY BOARD 1ST RESPONDENT

2. UYUI DISTRICT COUNCIL 2ND RESPONDENT

RULING

Date of Last Order: 11/7/2023

Date of Ruling: 28/7/2023

KADILU, J.

The applicant, Hassani Mgomeni has filed this application seeking for a grant of leave to file an appeal out of time against decision of the District Court of Tabora in Civil Case No. 10 of 2019. The application is made under Section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019 and supported by an affidavit of the applicant. The dispute between the applicant and respondents started way back in 2017 following the applicant's claim against the respondents for the sum of Tshs. 970,000/= plus Tshs. 8,000,000/= as general damages for breach of contract.

On 25/06/2020, the District Court of Tabora entered judgment in favour of the respondents. Dissatisfied with that decision, the applicant intends to pursue a first appeal to this court, but he found him-self out of time, hence this application. In this application, the applicant appeared in person whereas the respondents were represented by Ms. Mariam Matovolwa, Learned State Attorney.

During the hearing of this application, Ms. Mariam strongly argued that, the applicant has not accounted for each day of delay as required by the law. She contended that the applicant delayed to file his appeal for about three (3) years and there should be clear explanations on how he spent each day of delay. To support her argument, she cited the case of ***Board of Trustees of the Free Pentecostal Church of Tanzania vs Asha Selemani Chambada and Another, Civil Application No. 63 of 2023, TZCA 147.***

She also confronted the applicant's argument that he was late to file his appeal in time because being a lay person, he had to look for legal assistance. Ms. Mariam submitted that being ignorant of the laws has never been a ground for extension of time. She referred to the case of ***Ally Kinanda & Others vs Republic, Criminal Application No. 1 of 2016, TZCA 69.*** She finally prayed the application to be dismissed with costs as it does not fulfil legal requirements for extension of time to be granted.

The applicant on his part submitted that the major cause of his delay to file the appeal in time was due to the trial court's failure to supply a copy of judgment in time and when he got the said copies of the judgment, he found them containing different dates from those in the decree. As a result, his earlier appeal which was filed in time was struck out. He contended further that when he filed a proper appeal, it was found to be time-barred hence, struck out again.

Having carefully gone through the submissions made by both parties, the main issue for determination by this court is whether the applicant has shown sufficient cause for the court to grant him an extension of time. It is a trite law that a party seeking an extension of time to file an appeal has to show a good and sufficient cause for his delay. The position of the law is settled that the court may for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or application. That position of the law was expounded in the case of ***Mumello vs Bank of Tanzania, Civil Appeal No. 12 of 2002, Court of Appeal of Tanzania at Dar es Salaam*** where it was held that although extension of time is entirely at the discretion of the court to grant or refuse, it may only be granted where it has been sufficiently established that the delay was due to good and sufficient cause.

Upon perusal of the court records, I have noted that judgment of the trial court was pronounced on 25th June 2020 and the decree was issued to the appellant on 21 July 2020. However, the appeal was filed on 30th July 2020 and it was registered as DC. Civil appeal No. 13 of 2020 before Amour, J. after the time required to file an appeal.

After the Judge realized that the appeal was filed out of time without seeking or obtaining an order for extension of time from this court, it was struck out on 12/12/2022. The other reason which contributed to striking out the appeal was that the date of the attached judgment differed from the date of the decree contrary to Order XX, Rule 7 of the Civil Procedure Code, [Cap. 33 R.E. 2019]. Thus, I do not agree with the learned State

Attorney that the applicant delayed to file his appeal for about three (3) years while he was idle. After the appeal was struck out, the applicant knocked on the doors of this court on 19/1/2023 where he lodged this application. Therefore, it is with no shadow of doubt that the applicant was first supplied with a defective decree by the trial court and it led to the struck out of his appeal which was filed in time.

Diligently, the applicant applied for a certified copy of the decree from the trial court. As such, the defect in the decree which led to the delay of the applicant's appeal constituted a technical delay. This fact caused the applicant to delay filing his appeal against the impugned decision of the trial court at the early stage. Given this sequence of events, the applicant has demonstrated the steps he took diligently and the fact that it was the trial court that made the mistake, hence a technical delay. After his earlier appeal was struck out, he applied for the extension of time as he had a valid reason namely, technical delay. It is the view of this court that under the circumstances, leave to appeal out of time to the High Court is justifiable.

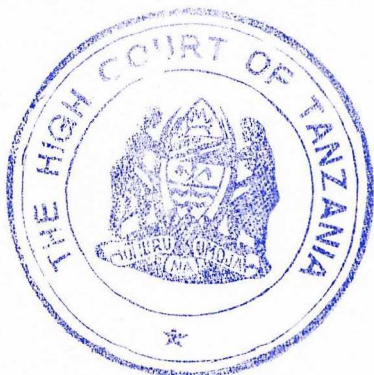
For the stated reasons, the applicant is granted time to file his appeal within 30 days from the date of this order. Each party shall bear his own costs.

It is so decided.


KADILU, M.J.

JUDGE

28/07/2023.



Ruling delivered in chamber on the 28th Day of July, 2023 in the absence of the parties.



A handwritten signature in blue ink, appearing to read "J. MDOE", is written over a circular stamp that partially overlaps the text.

J. MDOE

AG. DEPUTY REGISTRAR

28/07/2023