

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

CIVIL APPLICATION NO. 362 OF 2023

(Originating from Civil Appeal No. 67 of 2121 in the District Court of Ilala District at Kinyerezi as per Hon.Luvinga, RM dated 5th October 2022 which originated from Civil Case No.136 of 2021 of Kariakoo Primary Court at Upanga)

ICHEETAH LOGTECK TANZANIA LIMITEDAPPLICANT

VERSUS

ALFRODGE TANZANIA (ALFRED MTULAVANU).....RESPONDENT

RULING

Date of last Order: 27/10/2023

Date of Ruling: 02/11/ 2023

HON.GONZI, J.;

The Applicant brought this application under Section 25(1),(b) of the Magistrates Courts Act, Cap 11 of the Laws of Tanzania (R.E 2019). The Applicant sought for orders that this Honourable Court be pleased to extend time for the Applicant to file an appeal out of time to challenge the decision of the District Court of Ilala in Civil Appeal No.67/2021. The Applicant further prayed for costs and any other necessary Order the Court deems fit and just to grant.

The Application is supported by an affidavit of Chen Di, a Principal Officer of the Applicant company, annexed to the Chamber summons. The brief facts of the case show that the Applicant was sued by the Respondent in the Primary Court of Kariakoo in Civil Case No.136/ 2021 and when the decision of the Primary Court was delivered on 30th July 2021, the Appellant lost the case and was ordered to pay the Respondent Tshs. 11,466,724.5, amongst other reliefs granted to the Respondent. The Applicant was aggrieved with the decision of the Primary Court and appealed to the District Court of Ilala at Kinyerezi vide Civil Appeal No.67/2021 where he once again lost the case in the Judgment delivered by the District Court on 5th October 2022. Aggrieved with the decision of the District Court, on 16th December 2022 the Applicant decided to appeal whereby he filed in this Court Civil Appeal No.203 of 2023 which was placed Before Hon.Kisanya,J. The Appeal faced a preliminary Objection from the Respondent that it had been filed out of the prescribed time. On 2nd March 2023, the Civil Appeal No.203/2023 was struck out by Hon.Kisanya,J., on account of the fact that the Appeal was filed outside the prescribed time of 30 days in contravention of section 25(1)(b) of the Magistrate's Courts Act, Cap 11 of the Laws of Tanzania which requires

that an appeal against a decision of the District Court in the exercise of its appellate or revisional jurisdiction over matters originating from the Primary Court, be filed in this court within 30 days unless a prior extension of time is sought from and granted by the High Court. Hence the Applicant has brought the present application seeking for an extension of time so as to appeal an appeal against the decision of the District Court of Ilala in Civil Appeal No.67/2021 which was decided on 5th October 2022.

During the hearing of this application, the Applicant was represented by Mr. Benedict Magoto learned Advocate while the Respondent was represented by Mr. Johnson Msangi, learned Advocate. Mr. Magoto adopted the affidavit of the Principal Officer of the Applicant Company in support of the application and submitted that the applicant lost in Civil Appeal No.67 of 2021 whose decision was given on 5th October 2022 by the District Court. That thereafter, the Applicant lodged Civil Appeal No.203 of 2023 that was mistakenly filed directly to the High Court instead of the District Court and hence was met with a Preliminary Objection from the Respondent which objection the Applicant conceded to. That thereafter, the Applicant found himself out of time to appeal and hence the present application to seek for extension of time.

Mr. Magoto submitted further that the applicant deserves an extension of time as the application at hand has met the test for extension of time namely good cause for delay. In particular, Mr. Magoto submitted that the applicant has accounted for every single day of delay from the 5th October 2022 whereby the delay is of 281 days. Mr. Magoto accounted on how the 281 days were spent in filing petition of appeal No.203/2022; attending proceedings in Civil Appeal No.203/2022; applying for certified copies of the proceedings and Ruling in the said struck out Appeal No.203/2022 and awaiting the structural or organizational changes happening in the management of the Applicant Company so as to get the authorization to file this case in court. This reorganization and team change in the management of the Applicant Company, according to the Applicant, took up to 16th July 2023 when the much awaited authorization was granted to file the case and on the same date 16th July 2023 the present application was filed online and admitted. To substantiate his arguments Mr Magoto relied on the case of **Wilbard Mathew Senga versus Mkwega George Mathew Senga and another**, Civil Application No.508/01 of 2020 decided by the Court of Appeal of Tanzania sitting at Dar es Salaam which

requires an applicant for an extension of time to account for every single day of the delay.

Mr. Magoto submitted further that there is an illegality in the decisions of Ilala District Court and Kariakoo Primary Court which warrant extension of time so that it can be cured by the superior court. It was submitted that the Primary Court of Kariakoo committed two illegalities namely transferring a case file from one magistrate to another without assigning reasons for the transfer nor hearing the parties to the case about their willingness for the transfer and that the Primary Court decided the case without firstly hearing the assessors while it was the legal requirement for the Primary Court Magistrate at that time to seek for the opinion of assessors prior to delivering the judgment. The Applicant referred the Court to the case of **Ramadhani Bakari and 95 Others versus Aga Khan Hospital, Civil Application No.5/01 of 2021** where at page 14 the Court of Appeal held that illegality constitutes a good cause for extension of time. Mr. Magoto also relied on the case of **Charles Richard Kombe versus Kinondoni Municipal Council**, Civil Reference No.13/2019 where the Court of Appeal held that where illegality is put forward as a ground for extension of time, the applicant must substantiate

illegalities in terms of lack of jurisdiction on the part of the court that decided the case; that the case was barred under the law of limitation or there was a denial to the applicant of the right to be heard. The Applicant's Counsel argued that in the present case the illegality complained of is in respect of denial of the right to be heard on the part of the assessors in the Primary Court. He argued that had the assessors been heard, the decision of the Primary Court might have ended in favour of the Applicant. The applicant therefore prayed for this application to be allowed and each party to bear its own costs.

In response to the submissions by Mr. Magoto, the learned Counsel for Respondent Mr. Johnson Msangi learned counsel resisted the application. In his submissions Mr. Msangi adopted the contents of the counter affidavit of Alfred Mtulavanu Lawa and submitted that the delay sought by the applicant to be condoned by this court is of 284 days and not 281 days as submitted by the Applicant's counsel. Mr. Msangi submitted that the Judgment of the District Court of Ilala in Civil Appeal No.67 of 2021 was delivered on 5th October 2022 while the present application was filed on 18th July 2023 hence there was a lapse of 284 days. It was the argument by Mr. Msangi that the Applicant has failed to faithfully and deliberately

account for each and every single day of the delay. Mr. Msangi submitted that in the case of **Hyasinta Malisa Versus John Malisa**, Civil Application No.167/01 of 2021 decided by the Court of Appeal of Tanzania sitting at Dar es Salaam, the Court of Appeal insisted on the requirement to account for every single day of the delay within which certain steps should have been taken.

On the issue of illegality, Counsel for the Respondent submitted that the Respondent has not substantiated on how the alleged illegality has contributed to his delay to file the appeal on time.

Mr. Msangi further submitted that the reason of re-organization in the Applicant company is an internal arrangement which can not be advanced as a good cause for delays in court. He argued that if there were ongoing changes of leadership and waiting for authorization, that cannot be a good ground for delay because that cannot be used as an excuse in court of law. Mr. Msangi ended his submissions by praying for the application to be dismissed with costs.

In rejoinder, Mr. Magoto clarified on one point that the number of days for delay is 281 and not 284 as alleged by the Respondent's counsel because

in the 284 days the Respondent in his computation has also improperly included the date of filing the present application online on 16th and the date of its admission on 17th July 2023. He argued that the two days should be excluded.

After hearing the parties on their respective submissions and after scrutinization of the records of case as well as reading through the authorities cited by the counsel for both parties, I embarked upon composing the Ruling in the present application.

It is not in dispute that the case at hand has its origin in the Primary Court of Kariakoo where the Appellant lost and appealed to the District Court where he lost again. His Civil Appeal No.203 /2022 to this court was struck out for being time-barred, hence the present application for extension of time to lodge an appeal against the decision of the District Court. It is trite that appeals or revision applications and incidental proceedings thereto such as an extension of time, in respect of matters originating from the Primary Court, are governed by the Magistrate's Courts Act as well the Civil Procedure (Appeals Originating from Primary Courts) Rules GN No.312 of 1964. The Applicant in his application has cited only section 25(1)(b) of the Magistrate's Courts Act, Cap 11 of the Laws of Tanzania as the enabling

provision. However, by not citing the said Civil Procedure (Appeals Originating from Primary Courts) Rules GN No.312 of 1964, the Applicant has not thereby excluded the application of that law to his present application. Law, unlike a contract, imposes itself upon the parties whether they like it or not. Hence the Civil Procedure (Appeals Originating from Primary Courts) Rules GN No.312 of 1964, applies to the present application as well.

Section 25(1)(b) of the Magistrate's Courts Act, Cap 11 of the Laws of Tanzania provides that:

25.-(1) Save as hereinafter provided-

(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

On the other hand, Rule 3 of the Civil Procedure (Appeals Originating from Primary Courts) Rules GN No.312 of 1964 provides that:

3. Applications for leave to appeal out of time

An application for leave to appeal out of time to a district court from a decision or order of a primary court or to the High Court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall be in writing, shall set out the reasons why a petition of appeal was not or cannot be filed within thirty days after the date of the decision or order against which it is desired to appeal, and shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order:

Provided that where the application is to a district court, the court may permit the applicant to state his reasons orally and shall record the same.

It is the requirement of the law as per Rule 3 of the Civil Procedure (Appeals Originating from Primary Courts) Rules GN No.312 of 1964, that in an application for extension of time like the present one, the Applicant has to file in Court a formal application that is by way of chamber summons and an affidavit. In addition, the Applicant should accompany his application with a copy of the intended petition of appeal. But the law provides an alternative regarding the requirement of filing a petition of appeal in that in lieu thereof, the applicant may opt to set out the grounds of objection to the decision or Order. It is mandatory for the

applicant to either prepare the petition of appeal or to set out the grounds for his objection.

I have taken note of the fact that in the present application, the Applicant has not filed a petition of appeal. At first I wanted to summon the Counsel for both sides to address me on this issue before proceeding with determination of the application. This is due the legal requirement that if the court raises a new issue in the course of writing a decision, it should firstly call the parties and hear them before determining that issue. This requirement was emphasized in the case of **Shule ya sekondari Mwilamvya versus Kaemba Katumbu**, Civil Appeal No.323/2021 by the Court of Appeal of Tanzania which held that:

“as indicated earlier, in this appeal, the CMA in the course of composing the Ruling discussed the issue of time limitation and ruled that the application before it was time-barred thus ought to be stricken out. Obviously, this is a clear breach of the parties’ basic rights because they were not afforded a right to be heard on the question of time bar.”

In the present application, however, upon my further scrutiny of the affidavit by the applicant, it becomes very clear that the applicant his

affidavit and submissions made during the hearing of the application, has clearly set out and sufficiently brought to the attention of this court the grounds of his objection to the decision of the District Court of Ilala. These are namely re-assignment of his case from one Magistrate to another in the Primary Court without assigning reasons for the transfer or involving the parties and the Magistrate of the Primary Court delivering decision without firstly consulting assessors. These grounds of objection were pegged at the ground of illegality in the application for extension of time. It should be noted also that the Respondent's counsel took no issues with regard to this point. Therefore, I was of the view that the present application for extension of satisfied the requirements of the laws and the court proceeded to full determination thereof in merits.

There is no dispute that the High Court has jurisdiction to grant an extension of time for a person to appeal against the decision of the District Court. The words used under section 25(1)(b) of the MCA are that: **"... the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired."**

It is clear that under the above quoted provision, there are no grounds stipulated for extension of time to lodge an appeal to this Court but the word used is "may" which therefore entails discretion on the part of the Court. Extension of time to lodge an appeal being a matter of judicial discretion, under section 25(1)(2) of the MCA, requires the Court to exercise the discretion judiciously. That is by taking into consideration the relevant factors acceptable in law in applications for extension of time and assessing the surrounding facts in the particular application in order to test them if they fit into the legal requirements expected to be met by an applicant for extension of time.

Judicial precedents have established some guidelines or factors for consideration by the courts in entertaining applications for extension of time. These factors include, but are not limited to, the need for the applicant to account for each day of delay and illegality of the decision sought to be challenged on appeal.

The first pertinent question for consideration by the Court in the present case is whether or not the applicant has accounted for each day of delay. The second one, and in alternative, is whether or not there are

circumstances in the decision of the district court which on the face of it are indicative of an illegality pertaining to breach of natural justice right to be heard, lack of jurisdiction or the matter being time-barred.

I have considered the affidavit and arguments by the Applicant in attempting to account for the delay of 281 days as submitted. The Applicant has cited technical delay in that there was a time he spent in court in prosecuting Civil Appeal No.203/2022 which was lodged in Court and was ultimately struck out by the court before Hon.Kisanya,J., and that there was a time he spent in court while following up proceedings and ruling in the said Civil Appeal No.203/2022. In paragraph 4 of the affidavit the applicant, it is deponed that the Applicant filed Civil Appeal No.203/2022 on 16th December 2022. Then in paragraphs 5, 6 and 7 of the Affidavit, the Applicant states that it was until 2nd March 2023 that the civil appeal No.203/2022 was struck out by the Court for being time barred. Further, in paragraphs 8 and 9 of the affidavit, the applicant states that it took the Applicant up to 12th April 2023 to obtain certified copies, which she had requested, of the Ruling in Civil Appeal No.203 of 2022. Thus, it is apparent that the Applicant relies on technical delay contributed by the Court in the proceedings in relation to Civil Appeal No.203 of 2022 as an

excuse for delay from 16th December 2022 when he filed that appeal in court up to 12th April 2023 when he was supplied the certified copy of the Ruling. This is about 4 months delay which the Applicant attributes to the court processes and hence alleges it is a technical delay which should be condoned.

In my considered opinion, the alleged technical delay does not avail the applicant of any excuse in the circumstances of the present case. The reason behind is that for all that time the Applicant was not bonafide prosecuting the Civil Appeal No.203/2022 in court as that appeal itself, in the first place, had also been filed out of time and ultimately it was struck out by the High Court for being filed outside the prescribed time without there being a prior extension of time sought from and granted by the court. Reading through the Order of Honourable Kisanya, J., dated 02/03/2022 it is apparent that the Civil Appeal No.203/2022 was struck out with costs for being time barred and thus incompetent. It was not struck out for being un-procedurally filed directly in the High Court instead of the District Court, as it was submitted by the learned Counsel for the Applicant. It was time barred. It ought to have been preceded by an extension of time. I accept that technical delay can be condoned, but I am of the view

that the same can be done when the party was acting bonafides. Condoning the practice of lodging proceedings illegally and un-procedurally in courts and then later coming to utilize the same as an excuse for extension of time on the pretext of having been in court in pursuit of justice, would tantamount to encouraging unscrupulous persons to illegally institute proceedings and pack them in courts in the hope of freezing the hands of the clock; so that later they may come to sail on board those proceedings and seek an extension of time to once again bring other proceedings. I would be persuaded to consider the proceedings in relation to Civil Appeal No.203/2022 as an excuse if the case had been instituted on time and prosecuted bonafides. But here the Applicant is essentially trying to justify and legalize his second mistake by relying upon his own first mistake of lodging Civil Appeal No.203 of 2022. I am of the view that nobody should benefit from his own mistake. Therefore, I do not accept the alleged technical delay in relation to the proceedings in Civil Appeal No.203 of 2022 as a good cause for extending time to the applicant in the present matter.

The other explanation given by the Applicant in an attempt to account for every single day of the delay is that from 13th April 2023 to 2nd July 2023,

the Applicant was in consultation meetings with her advocates concerning instruction fee and the way forward in this application. The Applicant has argued that there were changes taking place in the administrative structure of the Applicant at that period too. Hence the Applicant was not able to lodge the Appeal or this application in the span of about 3 months from April 2023 to July 2023. I am not persuaded that personal convenience on the part of the Applicant can be advanced as a good ground for extension of time in court. The law cannot be twisted to fit into the personal conveniences of the litigants. Rather, it is the litigants, including prospective litigants, who should, while sorting out their own conveniences, take into account the requirements of the law; and not vice versa. If the law were to be subjected to the individuals' conveniences, it would lose one of its core characteristics, namely normativity. The law controls social behaviour by establishing a straight pattern to which all people should align themselves. All persons should organize their affairs in conformity with the law. In the present case, while the Applicant was under internal consultations and administrative restructuring processes as alleged, the applicant ought to have also taken into account the requirements of the law including the law of limitation of time to bring actions, appeals or

applications. After all, there is no any evidence brought in the present case to prove the alleged restructuring taking place in the Applicant company and to show how the same prevented the Applicant from lodging the appeal on time. Be it as it may, it must be remembered that in the present case, at the time the alleged management changes and consultations were taking place from April 2023 to July 2023, the Applicant had already long missed the boat way back since 4th November 2022 which was the expiration of the 30 days period within which to lodge the appeal. Therefore, the events happening in April 2023 to July 2023, even if proved, would not hold water. They could not have been the cause of death to a person who was otherwise already dead 5 months earlier. I decline to accept the reason of consultation or restructuring of the management of the applicant as a good cause for delay. I paused to ask myself what if the alleged consultation and reorganization process in the management of the Applicant company could take years to complete? Surely the court can not be expected to condone delays based on personal convenience of the parties.

On illegality, I accept that if it is well disclosed it constitutes a good cause for extension of time even if the Applicant fails to account for every single

day for delay. The position of the law is as stated by Mr. Magoto, Advocate for the Applicant and as it was held in the case of **Charles Richard Kombe versus Kinondoni Municipal Council, Civil Reference No.13/2019**. The Court of Appeal held that where illegality is put forward as a ground for extension of time, the applicant must disclose illegalities in terms of jurisdiction, law of limitation or denial of right to be heard. In the present case, the applicant has alleged illegality in re-assignment of the case file at the Primary Court from one magistrate to another and that the Magistrate made the decision without firstly consulting the assessors who sat with him. I will consider these grounds of illegality with caution without going decisively into their merits as this is not an appeal. When we look at the Judgment of the District Court, the Honourable Resident Magistrate answered these questions at pages 3 and 4 whereby they constituted the 1st and 4th grounds of appeal before him. On the question of assessors, the complaint of the applicant was and is not that assessors were absent altogether in the proceedings between the parties herein while they were in the Primary Court at a time when the law required Primary Courts to be composed of at least two assessors. The assessors were there and participated in the trial of the Applicant's case in the Primary Court, but the

applicant is complaining that the assessors were finally not heard by the Presiding Magistrate in the Primary Court so as to express their opinions before the judgment was pronounced. I am of the view that if the assessors were not used altogether, the Primary court would have lacked jurisdiction because at the time the case was in the Primary Court, it was still the requirement of the law for the Magistrate to sit with Assessors in terms of Rule 3(1) of the Magistrates Court (Primary Court) Judgment Rules. The Applicant has not raised an issue of jurisdiction here because he knows the Primary Court sat with assessors and was well composed. In an attempt to fit the application under the ground of illegality in terms of denial of the right to be heard in terms of the holding in the case of **Charles Richard Kombe versus Kinondoni Municipal Council** (supra), the complaint by the Applicant is that it is the assessors who sat with the Magistrate to try his case in the Primary Court who were not heard. The applicant is not advancing an argument that the applicant was not heard by the Magistrate or assessors! I pause here to ask, is the Applicant representing assessors in the matter at hand? Have the assessors informed to him that they were not heard? Was the applicant present when the Magistrate and Assessors were reaching their decision? At any rate the

allegation by the Applicant is not supported by records of the lower court. I find that the records of the lower court do not bear any indication of the Applicant not being heard as to advance the ground of illegality in terms of the principle in **Charles Richard Kombe versus Kinondoni Municipal Council**, (supra). As noted by the District Court, the assessors signed the judgment of the Primary Court signifying their participation in the judgment. The matter rests there, that in the case at hand, from the records of the lower court there is no issue suggestive of an illegality having a bearing to time limitation, denial of the applicant of his right to be heard or lack of jurisdiction on the lower court as to warrant extension of time on the ground of illegality.

On the reassignment of the case file from one Magistrate to another in the Primary Court, at pages 4 and 5 of the Judgment of the District Court this question is addressed very well when the District Court said:

“The records of the trial court show that the case was transferred even before hearing had started, and all the witnesses were heard by one magistrate”.

In this regard, I subscribe to the finding made by the District Court and I hold that there was nothing suggestive of illegality as to warrant an

extension of time in the present matter. At any rate, even if there had been irregularity in the process of the reassignment of a the case in the Primary Court, it would not have resulted into lack of jurisdiction, the suit being time barred or a party being denied his right to be heard. This application is bound to fail.

Before I pen-down, I would like to add one crucial point. The arguments by the Applicant on illegality in the present application have been presented in a way that the Applicant has been throughout blaming the Primary Court and not the District Court whose decision is sought to be challenged in case extension of time to appeal is given. Illegality was argued in respect of the alleged denial of the assessors' right to be heard in the Primary Court and on the alleged irregular re-assignment of the case from one Magistrate in the Primary Court to another. There has been no allegation, let alone an argument that the Applicant was denied right to be heard in the District Court. There has been no allegation that the District Court of Ilala lacked jurisdiction to entertain Civil Appeal No.67/2021 which originated from the Primary Court of Kariakoo. There has been no allegation that the Civil Appeal No.67/2021 in the District Court was time barred. In short there was no any allegation of illegality directed to the

decision of the District Court for the purpose of an application for extension of time. The Applicant has challenged the decision of the District Court as if the present case were an appeal against the decision of the District Court affirming the decision of the Primary Court. Nevertheless, I have tried to decide the present application on the broader terms but without going into the merits of the would be appeal. I am mindful of the words attributed to American Jurist Oliver Wendell Holmes who once stated:

"The training of lawyers is training in logic.....the language of judicial decision is mainly the language of logic. And the logical method and form flatter that longing for certainty and repose which is in every human mind."

I hope the broader analysis of the Applicant's application in terms of the his ground of illegality, which would otherwise be simply and deservedly rejected as being misplaced, helps to bring certainty and repose in the mind of the Applicant in the present case and the message sinks in his mind that public interest requires that litigations should come to an end.

All said and done, I find that this application for extension of time lacks merit and it is hereby dismissed with costs. Right of appeal explained.

It is so ordered.



A.H.Gonzi

Judge

02/11/ 2023

This Ruling is delivered in Court today the 2nd day of November 2023 in the presence of Mr. Benedict Magoto Advocate for the Applicant who is also holding brief for Mr. Johnson Msangi advocate for the Respondent.



A.H.Gonzi

Judge

02/11/ 2023