

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 367 OF 2023

(Arising from decision of District Court of Kibaha delivered by Hon. J. Lyimo of 31st day of March, 2023, from original case no. 91/2022 at Mailimoja Primary Court delivered by Hon. Kimweri on 24/01/2023)

ASHURA SAID@MNYEMBWE APPLICANT

VERSUS

REGINA GALIUS@MWINJA RESPONDENT

RULING

31st Oct & 8th Nov, 2023

KIREKIANO, J.:

The applicant herein was aggrieved by the decision of the District Court of Kibaha in Civil Appeal No. 15 of 2022. The same was delivered on 31st March, 2023. She is pursuing an appeal to this court. For reasons that will be shown shortly, she has not managed to access this court and have audience on her grievance

In this application through the service of Mr. Paul Hyera she is seeking for an order of this court to extend time to file her appeal. The application is brought under section 25(1) (b) of the **Magistrate Court**

Act Cap 11 [RE 2019] respondent contests the application but no counter affidavit was filed.

Briefly stated, the back ground of this application is that having being dissatisfied with the decision by the District Court issued on 31/03/2023, the applicant on 8/4/2023 filed an appeal to this court. When this appeal came for hearing, on 20/6/2023, this court Hon. Pomo, J noted that the appeal was improperly filed in this court as the same ought to be filed in the District Court at Kibaha in view of Section 25 (3) of the Magistrate Court Act. The appeal was thus withdraw to be filed in the proper registry.

The applicant was determined, she then filed her appeal in the District Court of Kibaha after she was supplied with the order of this court. It appears the filing was done online through online Registry platform known Judicial Statistical Dashboard System (JSDS) the same was returned on instruction that it should be filed in the high court.

It was from the above series of events days followed nights and the appellant found herself outside permissible time of 30 days to file appeal. She thus prays for extension of time and any other order this court may grant.

The respondent was represented by Mr. MGONJA. It is worth noting here that the respondent "counter affidavit" was expunged because it was incurably defective. Mr. MGONJA was however allowed to make his case on matters of law only.

Mr Hyera for applicant prayed this court to find that the appellant succumbed technical delay and that the applicant have demonstrated good cause as she was pursuing the matter in court. In support of this application, he cited the court of appeal decision in **Lyamuya Construction Ltd vs. Registered Board of Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 but also **Hilary Keraryo vs. AEA Limited, Civil Application No. 243/18 of 2021** to the effect that, the applicant must account for all period of delay, the delay should not be inordinate and applicant must show diligence. He thus prayed that the application be granted.

Mr. Mgonja for respondent, submitted on one aspect of law that the application must demonstrate that she took essential steps and account for all days of delay. In view of the cited decision in **Lyamuya** and decision in **Tanzania Fish Processors Ltd vs. Eusto K. Ntagalinda**, the

respondent counsel argued that, this application should fail as the applicant did not account for each day of delay especially from 10th – 19th July 2023.

In his brief rejoinder Mr. Hyera submitted that the applicant affidavit shows that she took steps hence the same should be taken as process of filing this application.

I have carefully considered the submissions of the learned advocates for the parties. As rightly submitted by the parties this court has discretion under section 251(b) of the Magistrate Court Act to enlarge time to file appeal. This was also stated in **Insurance Corporation Ltd V. Arusha Art Ltd, Civil Application No. 33 of 2015 CAT** that;

"Extension of time is a matter of the court and that the applicant must put material facts before the court which will persuade it to exercise its discretion in favour of an extension of time"

In the cited case of **Lyamuva Construction Company Ltd V. Board of Trustees of Young Women's Christian Association of Tanzania**, the test was stated as hereunder: -

- (a) The Applicant must account for 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, (Emphasis mine).

In this application, the question is whether the applicant has demonstrated sufficient grounds to warrant grant of this application.

In her affidavit, the applicant narrated how in the first place she filed an appeal in time before this court. The appeal was ultimately withdrawn for the reasons stated. This was after 50 days from 28/04/2023 till 20/06/2023. The applicant requested for order which she was supplied after 20 days that was 10/07/2023 and he filed this application on 21/07/2023. On his part, the respondent through Mr Mgonja has pressed that the applicant has not disclosed such material facts accounting each day of delay especially dates from 10th till 19th July 2023. The applicant insist it was for preparation of this application.

While I am very much alive to the principle that each day must be accounted for, I have also taken note on the apparent features surrounding the applicant delay. The delay was is argued to be technical delay. The explanation that the days from 10th – 19th July 2023 was that it was used for preparation to file this application.

From the trend above it is clear that substantial time of delay occurred while the applicant was pursuing justice in court. It would not sound well to say the least if the applicant were to be blamed for what could have been avoided by court registry when scrutinising the pleadings for admission.

In the upshot, I find that the applicant has demonstrated sufficient cause to warrant grant of this application, the same is accordingly granted.

The intended appeal is to be filed within ten (10) days from the date of this ruling. For avoidance of doubt, the appeal should be filed in the District Court of Kibaha which shall expeditiously transmit the same together with original records to this court in line with provision of section 25 (3) of The Magistrate Court Act Cap 11. I shall make no order as to costs.




A.J. KIREKIANO

JUDGE

8/11/2023

COURT: Ruling delivered in chamber in presence of Mr Tumaini Mgonja for respondent and in absence of the applicant.

Sgd: A.J. KIREKIANO

JUDGE

8/11/2023