

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT IJC MOROGORO

MISC. CIVIL APPLICATION NO. 39 OF 2023

CHAMA CHA USHIRIKA CHA MSINGI

WA WAKULIMA WA MIWA NA MAZAO

MENGINE(TUCOCPRCOS).....1ST APPLICANT

MTIBWA SUGAR ESTATE LIMITED.....2ND APPLICANT

VERSUS

SALUMU RAJABU KIDULI..... RESPONDENT

RULING

Date of Ruling: 12th December, 2023

LATIFA MANSOOR J

Through the legal representation of Mr. Niragira T.E, the applicant's advocate from Niragira Advocates based in Morogoro, the Applicants Chama cha Ushirika cha Msingi cha Wakulima wa Miwa na Mazao Mengine (TUCOCPRCOS) and Mtibwa Sugar Estate Limited, preferred the instant application by way of chamber summons made under Section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019] and any other enabling provisions of the law seeking orders as hereunder:



1. That this Honourable Court be pleased to extend time within which the Applicants may lodge an Appeal out of time as per the Ruling of the High Court of Tanzania at Morogoro all made by Hon. Judge Chaba Civil Appeal No. 25 of 2022 dated 30th of June, 2023.
2. Costs of the application be borne by the respondent.
3. Any other order or relief(s) this Honorable Court may deem fit to grant.

With the leave of the Court, the hearing of the application was canvassed by way of written submission by the order of this Court dated 31st of October, 2023.

The applicants were represented by Mr. Niragira T.E the learned advocate, whereas on his part, the respondent had the services of Mr. Abdul B. Kunabi the learned advocate.

Submitting in support of the application Mr. Niragira started by notifying this court that, the parties to the instant application were parties in Civil Appeal No. 25 of 2022 at High Court of Tanzania (Morogoro Sub Registry) at Morogoro which arose from Misc. Application No. 25 of 2021 at

Morogoro Resident Magistrate Court at Morogoro. He depicted further that, the said Civil Appeal No. 25 of 2022 was struck out on 30th of June, 2023 by Hon. Judge Chaba with direction or leave to refile an appeal within 14 days from the date of the Ruling. The Ruling of Hon Judge Chaba had upheld the preliminary objection raised by the respondent, and the appeal was found incompetent.

Advocate Niragira argues that he has sufficient grounds as shall be amplified hereunder to convince the court to grant the extension of time sought. In his efforts to convince the Court that he has advanced sufficient reasons for extension of time, he referred this court to the case of **Pita Kempap Ltd v Mohamed Abdul Hussein** Civil Application No. 128 of 2004 and 69/2005 CAT DSM (unreported), **Hamis Mohamed Anchi v Asha Saidi Makunga**, High Court of Tanzania at Dodoma Misc. Civil Application No. 03 of 2011 (unreported) and the case of **Ngoni-Matengo Cooperative Marketing Union Ltd v Alimqhamed Osman** [19591 EA 570 to weigh his submission.

Counsel Niragira submitted further that, the 14 days granted by Hon. Chaba J to file an appeal expired on 13th of July 2023 and that there has been a poor network on the JSDS2 for online filing of cases for almost

eight to nine days from 5th of July 2023, and this caused the delay to refile the appeal on the date extended by the Court through an appeal which was found to be incompetent. The Counsel also contended that, on 13th of July 2023 which was the last day to refile the said appeal, he was able to lodge the memorandum of appeal on JSDSII system, but, unfortunately the appeal was rejected by the Deputy Registrar. The Deputy Registrar advancing the reason that the appeal was time barred. The Counsel for the applicant seems to challenge the decision of the Deputy Registrar of the Court rejecting to admit the appeal, he says, he filed the appeal on time, that is to say on 13th of July 2023. The Counsel highlighted further that, in computing time from 30 day of June, 2023 to 13th of day of July 2023, the appeal was filed exactly within 14 days from when the applicants herein was granted leave by the Court to file the appeal. The applicant's counsel argues that he complied with the Order of the Court which granted the applicants 14 days to file the appeal, and that the applicants filed the appeal on time to the 14th day which was 13th day of July, 2023.

The Counsel for the Applicant further maintained that, the Deputy Registrar could have been correct to reject the appeal, if the appeal was filed beyond the 13th day of July, 2023. The Counsel highlighted further

he filed the appeal on time following the Order of this court issued by Honourable Judge Chabā; that the appeal was filed on 13th day of July, 2023, right on time counting 14 days from the date the order of Honourable Judge Chaba was given. The Counsel reminded this court on its powers to extend time before or after the expiration of time for the disputant to file an application or appeal. He insisted that in adversarial system a party can't lose his right due to technicalities and procedures and he added further that these procedures were set only to help the court to deliver justice and not otherwise and on this, he referred this honourable court the case of **Parina and Another v Abdulrasul Ahmed Jaffer and two others** [Misc. Civil cause No. 48 of 1992. He submitted further that, there was no delay to file the appeal before this court as the appeal was filed on 13th of day of July, 2023, in compliance of the order of the honourable court. Counsel for the applicants urged this Court to find in its infinite wisdom and in the interest of justice, there are sufficient reasons for allowing the application for extension of time.

Replying to the applicant's submission Mr. Abdul, the Counsel representing the respondent, contended that the applicants re-filed the appeal through system (JSDSII) without attaching the drawn order of the Ruling which allowed them an extension of 14 days to file the appeal. The

Counsel insisted that, the drawn order was a vital document to be attached to show that the applicants were allowed to file an appeal out of time, and that they were granted leave of the court, by Hon Judge Chaba J. The Counsel was of the view that failure on the part of the applicants to attach the drawn order which gave them leave to re-file the appeal out of time renders the appeal filed by them barred by limitations.

The Counsel for the respondent concluded that, the Deputy Registrar of the High Court of Tanzania, Morogoro sub-registry was correct to reject the appeal lodged by the applicants through JSDSII on ground of it being time barred.

The Counsel for the respondent was of the view that, the reason assigned by the applicants that the appeal was rejected by the Deputy Registrar for the appeal for it was filed out of time does not constitute sufficient cause enabling the Court to allow the application for extension of time to file an appeal out of time.

Regarding the issue of network error, the Counsel depicted Rule 20(1) of the Judicature and Application of Laws {Electronic Filing} and contended that it allows exemption on application by a party from filing electronically of the whole or part of the pleadings or documents where inter alia

electronic filing system is either inaccessible or not available. He maintained that, the provision cannot be applicable in the circumstances of this case as the appeal was successfully filed in the system but it was rejected because it was filed out of time and there was no leave of the court allowing the applicants to file the appeal out of time, the counsel argues that if at all there was leave granted by the court to the applicants to file the appeal out of time, the applicants were duty bound to attach the Ruling or Drawn Order to the memorandum of appeal. He argued further that the applicants did not access the remedy provided under Rule 20(1)(d) of the Judicature and Application of Laws {Electronic Filing} because the system was accessible and available. The Counsel for the respondent was of the view that if the system was not available or inaccessible, the applicants were supposed to apply to the Deputy Registrar to exempt them from filing electronically as the law allows manual filing if there is no network or when there is an error in the network. According to the Learned Counsel, the issue of network error as submitted by the applicants also is not a good cause, because the appeal was successfully filed in the system but it was rejected for being filed out of time and because no leave to file the appeal out of time was attached to memorandum of appeal. The Counsel for the Applicant urged this court to dismiss the application with costs.

Now, this is one of the applications in which the court is vested with powers to exercise its discretion. The court may only extend time for filing an appeal where the applicant has advanced sufficient cause for the delay.

This position is well stated in the cases of **Sospter Lulenga v. Republic**, Criminal Appeal No. 107 of 2006, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic**, Criminal Appeal No. 130 of 2003, Court of Appeal of Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others** [1973] EA 207.

In this case, there are two reasons for the delay advanced by the applicants, one, the rejection of the appeal by the Deputy Registrar and two, the network error. That, it was due to that improper rejection by the Deputy Registrar to refile the appeal and that the JSDSII system was not operating as there was a network problem. The applicants contend that they encountered a network failure when refiling the appeal, and this is what caused the delay to file the appeal on time. On the contrary, the respondent opposed and challenged both grounds as not sufficient grounds for this court to grant the extension of time to file an appeal arguing that the Deputy Registrar rightly rejected the memorandum of appeal on ground of being time barred as it was not accompanied with the decree or drawn order that allowed the applicants to refile the appeal

beyond the time prescribed or so extended by the court. Again, the issue of network error cannot stand as a sufficient cause as the applicant attempted and succeeded to refile the application which was rejected by the Deputy Registrar.

Reading the attachment MSE4 attached to the affidavit of the applicants, it is clear that there is no reason adduced by the Deputy Registrar to reject the appeal filed by the applicants, that being the case the respondent's assertion that it was rejected due to non-attachment of the decree or drawn order is unfounded, however it is undisputed fact that the appeal was rejected by the Deputy Registrar for being time bared and thus this court is convinced that even on non-disclosure of the reason for rejection by the Deputy Registrar, it is undisputed fact that the appeal was not accompanied with the order of the Court which allowed the applicants to file the appeal outside the period that was either prescribed or allowed by the Court. The Registrar was not satisfied as to the appropriateness of the memorandum of appeal to be filed and thus she rejected it, and as rightly argued by the respondent's counsel, the rejection of the Memorandum of Appeal by the Deputy Registrar cannot amount as sufficient grounds warranting the Court to extend time for filing an appeal.

In relation to the issue of network error, and as was rightly argued by the respondent, that the applicant could have applied for exemption from filling electronically as provided by the law and therefore, the applicant's and his counsel had no excuse to delay filling the memorandum of appeal.

I find that the applicants were negligent in filling the memorandum of appeal timely which and hence their reasons do not amount to sufficient cause for the delay. This position is stated in the case of **Transport Equipment Ltd Versus D.P. Valambhia** [1993] TLR 91 (CA); **Umoja Garage Versus National Bank of Commerce** [1997] TLR 109 (CA) and **Inspector Sadiki and others Versus Gerald Nkya** [1997] TLR 290 (CA).

I understand, a delay even of a single day must be accounted for as it was stated in the case of **Bushiri Hassan v. Latifa Lukio Mashayo** where the Court of Appeal of Tanzania stated that:

...a day of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken. –

Therefore, reckoning the date when the applicant was supposed to file the appeal to the date of its filing, the applicant had delayed for one day which have not been accounted for.

Based on the reasons stated above, I hereby find no good reason advanced by the applicants to warrant this court extend time to file an appeal. I dismiss the application with costs. Order accordingly.

**DATED AND DELEIVERED AT IJC MOROGORO THIS 12TH DAY OF
DECEMBER, 2023**



**MANSOOR, L
JUDGE
12/12/2023**

