

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

Misc Civil Application NO. 248 OF 2023

(Arising from the Judgment and Decree of the High Court of Tanzania, Dar es salaam District Registry at Dar es salaam, Honourable Munisi, J dated 07th day of September, 2017 in Land Cas No.17 of 2011)

ANNA F. EMMANUEL1st APPLICANT

ANGELINA F. EMMANUEL.....2nd APPLICANT

VERSUS

AFRICA MEDICAL RESEARCH

FOUNDATION..... RESPONDENT

RULING

MKWIZU, J: -

This is an application for an extension of time to lodge a Notice of Appeal and necessary documentation for the appeal process made under section 14(1) of the Law of Limitation Act (Cap 89 R: E 2019) Rules 10 and 47 of the Court of Appeal Rules, 2009, Section 68(e) and Section 95 and Order XLIII Rule 2 of the Civil Procedure Code (Cap 33 R: E 2019) supported three affidavits, two affidavits by the applicants and one by the applicants advocate, Nikolous Kashililika.

By the consent of the parties and their respective Advocates, this application was disposed of through oral submissions, the applicants

represented by Mr. Nicholas Kashiririka learned advocate while represented by Mr. Robert Mosi the learned advocate.

Arguing for the application, Mr. Nicholas Kashiririka Learned advocate at its inception adopted the Applicant's affidavits in support of the application disclosing to the court the reasons for the requested extension of the time. Pointing out a technical delay as a cause for the delay, the applicant's counsel said, the applicant's notice of appeal was struck out by the Court of Appeal on 10th May 2023 and they spent 13 days up to 23rd May 2023 to research, prepare, draft and file the application through the JSDS system. Reliance was made on **Fortunatus Masha V William Shija and Another**, (1997) TLR. 154 and **Vodacom Tanzania Public Company Limited V Commissioner General TRA**, Civil Application No 465/20/2019(Unreported) which laid a distinction between matters that involve real or actual delays and one involving technical delays in the sense that the original appeal was lodged in time but had been found to have been incompetent for one or another reason and a fresh appeal had to be instituted.

He said paragraph 5, of both applicant's affidavits shows that they have a successful Misc Civil Application No 4 of 2023 for an extension of time before this Court to file letters requesting for the proceedings as a prerequisite document for an appeal to the Court of Appeal and argued the court to granted the Application.

In rebuttal, the respondent counsel was of the view that the applicants must state good and sufficient cause, including accounting for every delay, showing that they acted promptly and not negligently in pursuing their rights or pointing out necessary points, illegality in the impinged

decision as enumerated in **Lyamuya Construction Company Limited Vs The Board of the Registered Trustees of Young Women's Christian Associations of Tanzania**, Civil Application No.2 of 2010(unreported)

Mr. Mosi submitted further that, the notice of appeal was already lodged at the Court of Appeal and the applicant never bothered to file a letter to request for necessary documents to proceed with the appeal prompting the striking out of the notice of appeal on 10/5/2023 for failure to take essential steps at the Court of Appeal. He relied on **TRA V Dawson Ishengoma**, Civil Appeal No. 126 of 2011(unreported), and **Juma Nassir Mtubwa V Namera Group of Industries Limited**, on page 6 maintaining that the impugned decision was handed down on 7th Sept 2017 almost 9 years from now contrary to the principle of justice that requires justice to come to an end, that the parties cannot litigate in court forever and that parties cannot be allowed to come to court at their own wish. Insistently, he argued, the applicants have failed to act diligently in this matter, not accounting for the delay, and the technical delay relied upon was caused by their negligence and therefore they cannot benefit from it. He lastly, advised the Court to dismiss the application with costs. Having considered the affidavits and the submission of both parties, the issue for determination is whether the applicants have established sufficient cause to warrant this Court to grant an extension of time. Section 14 (1) of the Law of Limitation Act provides that;

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and

an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application”.

As correctly stated by the parties, to have an extension of time granted, applicants must demonstrate sufficient cause. The word sufficient cause has not been defined but guidance on what amounts to sufficient cause was well enunciated in **Lyamuya Construction Limited’s case (supra)** in which factors to be taken into account in an application of this nature were laid to include the length of delay, the reasons for the delay, the degree of prejudice that the respondent may suffer if the application is granted, whether or not the application has been brought promptly, lack of diligence on the part of the applicant.

The issue of technical delay was also illustrated by this Court in the case of **The Registered Trustees of the Redeemed Assemblies of God in Tanzania v. Obed Heziron Sichembe and Another**, Misc Land Application No. 82 of 2021 HC at Mbeya, which set out the conditions to be proved where there is a technical delay alleged including:

" i. That, before the application for extension of time under consideration of the court, the applicant must have timely filed in court a matter or matters for some reliefs.

ii. That, the matter/s previously filed by the applicant (mentioned under the first paragraph above), must have been struck out for incompetence before the application for extension of time was instituted.

iii. That, subsequent to the striking out of the previous matter, the applicant must have filed in the court the application for enlargement of time (envisaged under the first paragraph above) for instituting a competent matter out of time which will seek the same relief/s as those which were sought in the previous matter that had been struck out.

iv: That, the applicant must have promptly and diligently filed in court the application for enlargement of time (envisaged under first and third paragraphs above), upon the previous matter being struck out."

Paragraphs 4,5,6,7 and 8 of the supporting affidavits raised technical delay as the sole ground. It is deposed that after the delivery of the judgment by this court on 18/9/2017, the applicants moved into filing a notice of appeal within time, they then sought a copy of the judgment and proceedings in vein that prompted the striking out of their notices of appeal at the Court of Appeal on 10/5/2023. Immediately thereafter they collected the ruling and applied for an extension of time to file letters requesting copies of the judgment and proceedings followed by this application.

Paragraphs 6,7,8,9 and 10 of the applicants' affidavits recount what happened from 10th May 2023 to the date of filing this application. According to the deposed fact, the ruling of the Court of Appeal was collected on 12/5/2023, they successfully engaged a lawyer to assist in handling the matter on 16th May 2023 and handled all the files on 18th May 2023. On 19/5/2023, they were advised to apply for an extension of time. The documents were thus drafted and filed in court on the 13th day after the order of the Court of Appeal striking out the Notice.

I am satisfied that the applicants have assigned good cause for the delay.
The application is meritorious. It is granted. Each party shall bear its costs.
Order accordingly



E. Y Mkwizu
Judge
15/12/2023