

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB - REGISTRY OF MWANZA
AT MWANZA**

MISC. CIVIL APPLICATION NO. 129 OF 2023

[From the Civil Appeal No. 03 of 2023, High Court (Mwanza)]

CHARLES BAHATI BILINGIAPPLICANT

VERSUS

POLE MASHAURI LUTASISARESPONDENT

RULING

Oct. 10th & Nov. 17th, 2023

Morris, J

Time to process the appeal to the Court of Appeal has run against the applicant above. He is presently moving this Court to determine his application for extension of time to file a notice of appeal. He has an affidavit supporting the application. The respondent, however, contests this application vide the counter affidavit.

Briefly accounted, the history of this matter started after the death of Bilingi Nyabere Lutasisa (*the deceased*) on 18/9/2021. The respondent, deceased' nephew, petitioned for letters of administration vide probate and administration cause no. 1 of 2022 at Ilemela District Court. He alleged that



the deceased left no surviving son. The applicant was not too far to file a caveat claiming to be the deceased's son. The District Court ordered for a DNA test. The applicant did not heed. Thus, the Court dismissed the caveat. The applicant unsuccessfully appealed to this Court (Civil Appeal No. 3 of 2023) against the subject dismissal. Still aggrieved, the applicant wishes to appeal to the Court of Appeal. However, he was late to file the requisite notice of appeal, hence, this application.

I ordered the application to be argued by way of written submissions. The lodging-schedule was complied with. Advocates Adam Robert and Masoud Mwanaupanga represented the applicant and respondent respectively. The applicant counsel's submissions reproduced the depositions of the applicant's affidavit: That, Adolois Law Chambers prepared various documents for the applicant including the notice of appeal, notice of motion and affidavit to be filed in the Court of Appeal but did not file them. And that the deceased's family was related to the applicant as evidence by attached photos of latter's family members.



In reply, it was the respondent's contention that, the applicant never filed the alleged documents; his instruction to Adolois Law Chambers notwithstanding. To him, the said documents were not filed because the applicant's case had no merit after refusing to undergo DNA test against the court order. Regarding the attached photographs, the respondent submitted that the same were unauthentic and were not tendered before the District Court.

On the basis of affidavital depositions and submissions of the parties, the Court will determine the application by answering one major question: whether or not ground advanced by the applicant suffice in making this court to allow the application. The law requires that the applicant should demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in time. In so doing, he/she will discharge the obligation of proving how each day of delay justifiably passed by at no applicant's fault. Accordingly, the subject applicant will deserve a favorable Court's discretionary advantage as it was held in ***Hamis Babu Bally v The Judicial***



Officers Ethics Committee and 3 Others, Civil Application No. 130/01 of 2020 (unreported); among many other cases in such line.

The essence of setting the time limits in law is, among other objectives, to promote the expeditious dispatch of litigation [***Costellow v Somerset County Council*** (1993) IWLR 256]; to provide certainty of timeframe for the conduct of litigation [***Ratman v Cumara Samy*** (1965) IWLR 8]; and enhance public trust to the judicial system. Consequently, it works in the advantage of proper management of resources; most important of which are time and money.

From the applicant's affidavit, there is a sole reason for delay. The applicant alleges that he engaged Adolois Law Chambers to process his appeal but the lawyers failed. Working from an assumption that the allegation is true; the to-be- impugned judgement was delivered on 16/06/2023 but this application was filed on 26/8/2023. That is 2, months and ten days. Rule 68 (1) of ***the Court of Appeal Rules***, 2009 requires the subject notice to be filed within thirty (30) days of the decision. Therefore, the applicant delayed for 40 days.

However, the affidavit is silent as to when Adolois Law Chambers were engaged. It is, thus, unclear to the Court if the said advocates were timely engaged. Further, the affidavit is as silent as the churchyard regarding the date when the applicant became aware of the delay. In effect, the applicant failed to account for days of delay.

It is cardinal principle of law that, one applying for extension of time must account for each and every day of the delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court held that delay “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”. See also the cases of ***Yazidi Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & Another***, Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa (legal personal representative of Joshua Rwamafa)***, Civil Application No. 4 of 2014; ***Dar es Salaam City Council v Group Security Co. Ltd***, Civil Application No. 234 of 2015; and ***Muse Zongori Kisere v Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019 (all unreported).

Moreover, no draft/copy of the notice of appeal allegedly drawn by Adolois Law Chambers was attached. Further, the attached documents (notice of motion for revision and affidavit) were not duly attested, at least to assist the Court with the countdown point. Further, no affidavit from Adolois Law Chambers was attached to prove the applicant's averment. The law requires that when the source of information is another person; an affidavit from such other person is obligatory. Lest, such averment becomes hearsay and, thus, inadmissible. I refer to ***Narcis Nestory v Geita Gold Mining Ltd***, Misc. Labour Application No. 13 of 2020; ***NBC Ltd v Superdoll Trailer Manufacture Co. Ltd.***, Civil Application. No. 13 of 2002; and ***Awadh Abood (As Legal personal representative of the Estate of the Late Salehe Abood Salehe) v TANROADS and AG***, Misc. Land Application No. 53 of 2020 (all unreported).

Before I pen off, I wish to comment on the strategy adopted by the applicant's counsel. He weirdly appended the unsolicited annextures (photographs) to his submissions. Submissions are not evidence. That is law. Submissions are mere arguments for and against parties' rivalry theories and

themes of the case. In other words, they are just meant to sum-up the evidence already adduced (orally or in an affidavit) with reference to the applicable law. Exhibits, thus, cannot be annexed to submissions. This Court categorically armour-plated this principle in ***Vocational Education Training Authority vs Ghana Building Contractors and Another***, Civil Case No. 198 of 1995 (unreported). All the same, I find no sufficient reason has been fronted by the applicant to justify extension of time.

For the stated reasons above, I find that this Court has not been legitimately moved to extend the time hereof. The application, thus, lacks merit. It is accordingly dismissed. Each party to shoulder own costs.



C.K.K. Morris

Judge

November 17th, 2023