

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO.296 OF 2023

*(Originating from Civil Case No. 157 of 2020 Kinondoni Before Hon. Lyamuya A.M
PRM)*

**AGGREY & CLIFFORD COMPANY
LIMITED.....APPLICANT**

VS

**SAHARA MEDIA GROUP
LIMITED.....RESPONDENT**

RULING

S. M. MAGHIMBI, J:

This application has been lodged under the provisions of Section 14 of the Law of Limitation Act Cap. 89 R. E. 2019 ("the Limitation Act") and Section 93 of the Civil Procedure Code Cap. 33 R. E. 2019 ("the CPC").

The applicant is moving the court for the following orders:

- 1) That, this Honourable Court be pleased to grant an enlargement of time to file an Appeal out time.
- 2) That, the Honourable Court be pleased to grant any other orders or reliefs as it deems fit and just in the circumstances.

The chamber summons was made was supported by an affidavit of Mndelwa Lukio Tenga, a Principle Officer of the applicant, an affidavit sworn on the 20th day of June, 2023. Before me, the applicant was

represented by Mr. Greyson Laizer, learned Advocate while the respondent was represented by Ms. Neria Martin, learned Advocate.

Brief background of the matter is that the parties herein were parties in Civil Case No. 157 of 2020 ("the suit") which was decided in favour of the respondent on the 30th day of January, 2023. Aggrieved by the said decision the applicant, for reasons outlined in the affidavit, was late to lodge her appeal hence this application for extension of time to lodge the intended appeal.

In their affidavit in support of the application and Mr. Laizer's submissions, the reasons for the delay were that the delay was caused the by the acts of an advocate who had not submitted his appeal physically for purposes of registration. It was the applicant's contention that the advocate had filed the appeal electronically and the appeal was admitted on e-filing system, proof of which was stated under paragraph 7 of the affidavit. He argued that the law is clear that an error of an advocate is not a sufficient reason for extension of time, quickly referring to the circumstances that may render the Court to extend time in such circumstances. He supported the argument by citing the case of **Mwaikenda Ahobokile Michael Vs. Interchick Company Limited in Civil Application No. 364 of 2020** where the said position was held.

Mr. Laizer then submitted that for an extension of time to be granted on bases on negligence of an advocate, the applicant must show personal follow ups made. In the affidavit to support the application, particularly para 9, 10, 11 and 12 of the affidavit where the applicant averred that he became aware of the existing case upon being served with a Garnishee Order Nisi against a former employee. The subsequent events under the subsequent paras included visiting the court in May, 2023 and new instructions to the current advocate who represents them. They then submitted that it was in follow up of the case that they learnt the advocates negligence.

Submitting on the delay, under paragraph 15 and 16 of the supporting affidavit the applicant averred that that it was on the 13th June 2023 he learnt of the advocates act of not submitting the appeal physically for filing and registration, the follow up was after the advocate handed over all files on 12th August 2023. That soon after a new advocate was instructed to take over the matter, he took necessary steps in seeking for extension of time hence the length of days delayed was only seven days. The applicant prayed for the grant of extension of time since it is the applicant that would have suffer if an extension of time is not granted.

In reply, Ms. Martin submitted that in granting extension of time, the Court has the discretion to do by considering some factors including an account for each day of delay. She cited the case of **Tanzania Coffee Board vs Rombo Millers Limited, Civil Application No. 13 of 2015** where the position was held. Looking at whether the applicant has accounted for each day of delay, she submitted that not all days have been accounted for as the applicant has delayed for 150 days from the date the judgement was delivered to the date the appeal was lodged.

Ms. Martin went on submitting that the reason for the delay claimed by the applicant to be the advocates negligence is absolutely misconceived and misplaced. She argued that the reason that the former advocate failed to submit a copy of the appeal for filing is negligence and lack of due diligence which does not call to be a sufficient cause for extension of time. The case of **Bahati M. Ngowi vs Paul Aidan Ulungi Misc. Civil Application No. 490 of 2013** was cited in support of this line of submission.

Ms. Martin went on submitting that the applicant had failed to make follow up of her own case pointing out that the Court has put a precedent that even if a party has engaged an advocate, he/she still has the duty to make follow up of their case. She referred the court to the case of **Bahati**

Ngowi vs Paul Aidan Ulungi (supra). She then pointed out that from the applicant's affidavit, one will notice that the applicant had not made follow-up of their case until 12th June, 2023, meaning that the applicant had only dumped her case with the former advocate. She also argued that the applicant has also failed to procure the affidavit of their former advocate since she has been mentioned in the applicant's affidavit. It is from the above that Ms. Martin prayed for the dismissal of the application with costs.

In a brief rejoinder, Mr. Laizer counter argued that the days of delay have been accounted for. He pointed to para 14,15, 16 and 17 of the affidavit which clearly averred that after being aware of what had been done by the previous advocate, another advocate was immediately engaged and the appeal process started. On the argument that there is a delay of 150 days which have not been accounted for, he pointed to paragraph 6 and 7 of the affidavit which show the appeal to have been admitted on 07th March 2023 therefore counting from that date to 13th June 2023 when this application was filed, it is 98 days and not 150. Mr. Laizer then submitted that in application for extension of time, each case should be determined in its circumstances. In this case, he submitted, it is clear that the applicant became aware that the advocate had not filed

the appeal physically but the same had already been filed electronically. And after the applicant having this in knowledge, they engaged another advocate who took over immediately. He reiterated his prayer that the application should be granted.

Having heard the submissions of the parties and the records of this application, it is now to determine whether the advanced reasons for the delay warrant this court to exercise its discretion to extend time. It is well established in our jurisdiction that power to grant an extension of time is in the discretion of the Court, a discretion which has to be exercised judicially upon a court's satisfaction that there is a sufficient cause to warrant the exercise of the discretionary power. There are also no hard and fast rules as to what constitutes the delay and it is at this point that each case has to be decided on its own peculiar circumstances. In the case of **Yusufu Same and Hawa Dada Vs Hadija Yusufu, Civil Appeal No. 1 of 2022**, (unreported), the Court of Appeal held as follows;

"... It should be observed that the term " sufficient cause " should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step."

In the celebrated case of **Lyamuya Construction Co. Ltd vs Board of Registered Young Women's Christian Association of Tanzania (Civil Application No. 2 of 2010 [2011] TZCA 4)**, the Court had established four principles to be met for one to be granted extension of time. The first one is that the Applicant must account for all days of delay, secondly, the period of delay should be reasonable. On the third principle the court emphasized that the Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and fourth, if the Court feels that there are other reasons, such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged, then time may be extended.

In the records, what transpired is that the applicant had an appeal before this Court which was filed by the Advocate previously representing her in the said appeal. However, after loding the appeal online, the learned advocate did not proceed to physical filing for the same to be registered and assigned to a judge. At this point, it has been established that the delay was not out of negligence, inaction or sloppiness, it was rather technical. In the case of **Fortunatus Masha v. William Shija and**

Another [1997] TLR 154, in allowing an extension, the Court observed at p. 155:

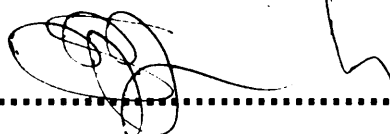
"...a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any rely refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal.

As stated in this case, the previous advocate did not make follow up on the filed appeal, and when the applicant made follow ups and gained knowledge of this fact, she took initiatives to rectify the unfinished procedure.

As for the period of delay, the records on requisites on accounting for each day of delay the records reveal that there was a delay of 98 days unlike the 150 days claimed by the respondent. The applicant has shown the efforts taken in making follow up of the appeal and when the anomaly was discovered, immediate measures were taken to rectify the same hence she did not sleep over her right. Looking at what transpired in the circumstance stated by the applicant, it means that the appeal was electronically filed and fees were duly paid, a fact which has not been disputed by the respondent. Failure of the previous Counsel for the applicant to file the hard copy of the appeal should not be burden to the applicant having already conferred the powers to her previous advocate.

On those findings, I find that the applicant has successfully established sufficient reasons for the delay to warrant this court's exercise of its discretion to extend time. Consequently, this application is hereby granted. Time is hereby extended for the applicant to lodge her intended appeal which shall be lodged in this court within 21 days from the date of this ruling. Costs shall follow cause.

Dated at Dar es Salaam this 16th day of November, 2023.



S. M. MAGHIMBI

JUDGE