

**IN THE HIGH COURT OF TANZANIA
(IN THE SUBREGISTRY OF MWANZA)**

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 116 OF 2022

JULIUS PHILIBERT SHADRACK.....APPLICANT

VERSUS

THE BOARD OF PAMBA SECONDARY SCHOOL.....1ST RESPONDENT

THE PERMANENT SECRETARY

MINISTRY OF EDUCATION.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

Date of Last Order: 15/02/2023

Date of Ruling: 17/02/2023

Kamana, J:

Under Chamber Summons made under section 11(1) of the Appellate Jurisdiction Act, Cap.141 [RE.2019], the Applicant is seeking an order for extension of time to apply for leave to lodge an appeal against the Respondents. The Chamber Summons is supported by an affidavit deposed by the Applicant.

The application was heard *ex parte* after the Respondents failed to enter appearance for reasons best known to them. The same was argued orally.

Submitting in support of his application, the Applicant implored this Court to grant his application on the grounds stated in his affidavit. According to paragraph 3 of the affidavit, the Applicant averred that he applied to the High Court for prerogative orders in the nature of certiorari with a view to quashing the decision of the Minister responsible for education which upheld the decision of the first Respondent to expel him from school. The said application was dismissed for being time barred.

Aggrieved, the Applicant, according to paragraph 5 of the affidavit, appealed against such decision to the Court of Appeal in Civil Appeal No. 484 of 2021. Thereat, the Court of Appeal struck out the appeal on the ground that the same was lodged without leave of the High Court or the Court of Appeal.

In his quest for justice, the Applicant filed in the High Court an application for extension of time to file an application for leave to file an appeal. The application, according to paragraph 6 of the affidavit, was struck out for want of jurisdiction.

In reasoning on why this application should be granted, the Applicant, in paragraph 3 and 7, attributed the delay to the fact that as a lay person he was not conversant with technical requirements of the law relating to filing an appeal to the Court of appeal.

The issue I am invited to address is whether the application is meritorious. In determining this issue, I will be guided by the cardinal principle that orders as to the extension of time are granted at the discretion of the courts judiciously when they are satisfied with the gravity of reasons for the delays. This is a position which has been elucidated in a number of cases including the case of **Salum S/O Rashid Kingalangala v. Republic**, Miscellaneous Criminal Application No.30 of 2020 where it was stated:

'It is a general principle that extension of time is granted by the Court in exercising its judicial discretion upon the establishment of sufficient cause which prompted the delay by the applicant.'

As I pointed hereinabove, the only reason advanced by the Applicant for his delay to apply for a leave to appeal to the Court of appeal was his unfamiliarity with the procedures of appealing to the Court of Appeal. In view of that, he found himself in the corridors of the Court of Appeal without a leave to be there. When the appeal was struck out, he decided to seek leave of the High Court to lodge an appeal. Being out of time, he applied for extension of time to lodge application for leave to file an appeal. The application was not granted for what was termed by the

High Court as lack of jurisdiction since the Applicant sought orders of that Court which in effect sought to rectify orders of the Court of Appeal.

While the advanced reasons may fall within the ambits of what is known as technical delay, I do not consider them as such. In his affidavit, the Applicant did not state whether the appeal against the decision of the High Court in Miscellaneous Cause No.151 of 2020 which was struck out was filed within the time. He did not even state the date on which he filed the appeal. In such circumstances, it is uncertain whether the Applicant exercised his right to appeal within the time though through a wrong procedure or otherwise.

Since it is uncertain on whether the appeal to the Court of Appeal was filed within or out of time, it goes without saying that the Applicant has failed to account for each day of delay. As a matter of principle, for an extension of time to be granted, the applicant must account for each day of delay. There is plethora of authorities in this regard. For the purpose of this Ruling, I invite the Court of Appeal in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007,), where the Court emphasized that:

'...Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules

prescribing period within which certain steps have to be taken.'

From the foregoing, I struck out the application without costs. Order accordingly.

DATED at **MWANZA** this 17th day of February, 2023.



KS KAMANA

JUDGE