

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. CIVIL APPLICATION NO. 01 OF 2023

(Arising from PC Civil Appeal No. 38 of 2022 District Court of Karagwe Originating from Civil Case No. 44 of 2021 Nkwenda Primary Court)

FAUSTINE HUMULE..... APPLICANT

VERSUS

ISSAKA KALEKU..... RESPONDENT

RULING

15th and 20th February, 2023

BANZI, J.:

The Applicant Faustine Humule filed this application under section 14 of the Law of Limitation Act [Cap. 89 R.E. 2019] seeking extension of time within which he can file application for re-admission of his appeal that was dismissed on 15th September, 2022 for want of prosecution. It is supported by an affidavit of the Applicant. The Respondent opposed the application by filing counter affidavit.

At the hearing, Mr. Celestine Ntagara, learned counsel appeared for the Applicant whilst, Mr. Raymond Laurent, learned counsel represented the Respondent.

Arguing in support of the application, Mr. Ntagara adopted the affidavit of the Applicant and submitted that, on 20th May, 2022, the Applicant filed his appeal before this court and thereafter, he made follow up so as to know if the same was assigned already but he did not get any information. He further submitted that, the Applicant has never received any text message or summons to serve the Respondent. Surprisingly, on 2nd December, 2022, he received summons concerning execution of the decision of the Primary Court which was attached by dismissal order of his appeal before the High Court. He concluded by stating that, since the Applicant was not aware of the dismissal order, this application be granted with costs so that he can apply for re-admission of his appeal and be heard accordingly. He cited the cases of **Shomary Abdallah v. Abdallah Hussein and Another** [1991] TLR 135 and **National Housing Corporation v. Tanzania Shoes Company and Others** [1995] TLR 251 on right to be heard.

In his reply, Mr. Laurent also adopted the counter affidavit the Respondent as part of his submission and urged this Court to dismiss the application because the Applicant has failed to establish sufficient cause for the delay as required by law. Furthermore, he submitted that, the Applicant is trying to shift the blame to court officials while it was his duty to follow up after filing his appeal instead of waiting for text message or call from Court.

It was further his contention that, the Applicant failed to account for each day of the delay and his action amounts to negligence and lack of diligence which should not be condoned by this Court. To bolster his submission, he cited unreported decisions of the Court of Appeal in the cases of **Dar es Salaam City Council v. S. Group Co Ltd**, Civil Application No. 234 of 2015, **Paul Martin v. Bertha Anderson**, AR Civil Application No. 7 of 2005 and **Azizi Mohamed v. The Republic**, Criminal Appeal No. 84/07 of 2019. He concluded his submission by praying for dismissal of this application with costs because the Applicant has failed to establish sufficient reason for this Court to exercise its discretion.

A brief rejoinder was made by Mr. Ntangara who insisted that, the court is duty bound to inform parties about the date of the case through issuing summons which was not the case in this matter. He reiterated his prayer in his chief submission.

Having carefully considered the affidavits, the record as well as the rival arguments of learned counsel for both sides, the main issue for determination is *whether the Applicant has established sufficient cause to warrant this Court to grant extension of time.*

It is settled law that, extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

Refer the case **Benedict Mumello v. Bank of Tanzania** [2006] 1 EA 227. However, what amount to sufficient cause has not been defined but there are plenty of legal authorities which underline factors to be taken into account including 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 just to mention a few. See the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 CAT (unreported) and **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016 CAT (unreported).

In the matter at hand, the reason for the delay is found in paragraph 7 and 8 of the affidavit. According to what he stated in these paragraphs, the Applicant became aware of the dismissal order of his appeal on 2nd December, 2022 when he was served with a summons for execution from Nkwenda Primary Court. Soon thereafter, he filed the application to set aside the dismissal order but the same was rejected for being out of time. A close look on record reveals that, this application was presented for filing on 3rd January, 2023 although the affidavit appears to be verified in 29th December, 2022. All these demonstrate promptness on the part of the Applicant, and

thus, the suggestion by learned counsel for the Respondent that, the Applicant's action demonstrates inaction and lack of diligence is unfounded.

I am very much aware that one among the factors that constitute sufficient cause is for the Applicant to account for each day of the delay as submitted by learned counsel for the Respondent. However, this is just one among the factors that constitute sufficient cause. Besides, the factors mentioned above as developed by case laws were not meant to be used cumulatively, but rather, they are used depending on circumstances of each particular case. In the particular circumstances of this case, the explanation by the Applicant demonstrates promptness and therefore the case of **Dar es Salaam City Council v. S. Group Co Ltd** where the Applicant failed to account for over sixty days is distinguishable.

Nonetheless, other issues raised by learned counsel for both sides such as; whether the court has issued summons/notice of hearing and why the Applicant did not receive while the Respondent had received, with due respect are not relevant at this stage because they go to the root of the main application of re-admission of the appeal. The same applies to the issue of denial of right to be heard.

That being said, it is the finding of this Court that, the Applicant has managed to establish sufficient cause to warrant this Court to grant the

extension. Thus, the application is hereby granted and the Applicant is given thirty (30) days from the date of this ruling to file the application of re-admission of appeal. Each party shall bear its own costs.

It is accordingly ordered.



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I. K. BANZI
JUDGE
20/02/2023

Delivered this 20th day of February, 2023 in the presence of the Applicant in person and Mr. Raymond Laurent, learned counsel for the Respondent.



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I. K. BANZI
JUDGE
20/02/2023