

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 115 OF 2023

*(C/f Civil Appeal No. 9 of 2022 Arumeru District Court, Originating from Civil Case No. 17 of 2020
Emaoi Primary Court)*

ZAKAYO MEVALARI..... APPLICANT

VERSUS

MAIKO ELIFAS..... RESPONDENT

RULING

21st February & 26th March, 2024

TIGANGA, J.

The applicant prays for extension of time so that he can appeal against the whole decision of the District Court of Arumeru in Civil Appeal No. 9 of 2022 (I.T. Nguvava, SRM).

The application is made by chamber summons under section 25 (1)(b) of the **Magistrates Courts' Act**, Cap 11 R.E. 2022 (MCA), and is supported by the applicant's affidavit. In his affidavit, he deposed that, he was sick and had been attending medical treatments in various hospitals including Mt. Meru Referral Hospital where he went through routine medical treatment since January 2022. He said his poor health failed him to make follow-ups to obtain copies of judgment and

proceedings from the 1st appellate court and by the time he collected them, he was out of time.

Having seen that, the proceedings and judgment were tainted with illegalities, he filed for the application for extension of time in this Court so that, he can be extended time to file his appeal out of time vide Misc. Civil Application No. 4 of 2023 (Gwae, J). However, the same was struck out for being incompetent with the liberty to refile within 14 days, hence the current application.

Opposing the application, the respondent filed a counter affidavit challenging the application on the grounds that, he did not show when he was availed with the said copies of judgment. More so, he did not show the exact dates that he received treatments from Mt. Meru Hospital. He also deponed that, the applicant is not a trustworthy person because on the days he claimed to have been sick in January, he was perfectly fine as they had another Civil Case No. 71 of 2021 before Enboishu Primary Court which was finalized in July, 2022.

He also deponed that, the applicant's affidavit does not show if immediately after the judgment was delivered, he made any attempt like requesting for the copies of Judgment and proceedings for appeal

purposes. According to the respondent, there is no sufficient reason demonstrated by the applicant for him to be granted extension of time.

During the hearing of the application, the applicant was represented by Mr. Emmanuel Kokan, learned Advocate whereas the respondent appeared in person, unrepresented.

Supporting the application Mr. Kokan prayed to adopt the applicant's affidavit to form part of his submission and averred that, the main reason for the applicant's failure to file his appeal timey was because he was sick from January 2022. That he was receiving treatments from Mt. Meru Referral Hospital, and the medical report attached to the affidavit proves that fact. In cementing his stance that sickness is sufficient ground to be granted extension of time, the learned Advocate referred this Court to the case of **Murtaza Mohamed Raza Virani & Another vs. Mehboob Hassanali Versi**, Civil Application No. 448/01 of 2020, CAT at Dar es Salaam.

Submitting further the learned Advocate raised another ground for extension of time as the illegality of the decision of the District Court. He argued that the 1st appellate court raised issues that were not raised at the primary Court or deliberated upon. For these two reasons, he prayed to be extended time so that the applicant could file an appeal out of time.

In reply, the respondent prayed that the Court adopt his counter affidavit as his submission. In brief rejoinder, Adv. Kokan reiterated his submission in chief and added that, according to paragraph 5 of the respondent's counter affidavit, the applicant appeared at Enaboishu Primary Court as Michael Eliphas Mollel while in this application the applicant is Maiko Elifas which implies two different persons. He maintained that this application be granted.

Having gone through the parties' affidavits and submissions, the pertinent question for determination is whether this application for extension of time is meritorious. The law is clear that granting of extension of time is purely discretionary in nature hence, but it must be exercised judiciously and according to the rules of reason and justice. It can only be exercised upon the Court being furnished with good reasons by the applicant as held in the case of **Robert Schelters vs. Mr. Baldev Norataram Varma and Two Others**, Civil Application No. 536/16 CAT at Dsm (unreported) where it was held inter alia that;

*"... in **Oswald Masatu Mwizarubi V. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, the Court held that:-*

*What constitutes **good cause cannot be laid down by any hard and fast rules. The term "good Causes" is a relative one and is dependent upon the***

*party seeking extension of time **to provide the relevant material in order to move the court to exercise its discretion.**" [Emphasis added].*

Also, in the famous case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported) Court of Appeal held *inter alia* that,

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to the private opinion or arbitrarily."

Applying the above principles in the application at hand, the applicant claimed that, his failure to file an appeal on time was because he was sick from January 2022. This was verified by a Medical Chit from Mt. Meru Referral Hospital dated 3rd January 2023. Looking at the District Court's decision, the same was delivered on 22nd August 2022, however, the initial application for extension of time Misc. Civil Application No. 04 of 2023 (Gwae, J.) was filed in this Court on 07th March 2023. This shows a time-lapse of 63 days from when the Medical Report was issued to the filing of the initial application. Such time was never accounted for as held

in the case of **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 where the requirement of accounting every day of delay was emphasized;

"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".

Be as it may, section 25 (3) and (4) of the MCA which governs appeals from Primary Courts does not require attachment of proceedings and judgment in the petition of appeal. This was also underscored in the case of **Kissioki Emmanuel vs. Zakaria Emmanuel**, Civil Appeal No. 140 of 2016, CAT at Arusha where the Court of Appeal of Tanzania held that;

*"Perhaps, we should start with **Sophia Mdee** (supra), cited to us by Mr. Materu. In that case, the Court discussed the applicable procedure for appealing to the High Court on matters originating from the Primary Court. Having considered section 25 (3) and (4) of the MCA, the Court held that:*

"It is clear that if one intends to appeal to the High Court the decision or order of the District Court in matters originating from the Primary Court, he has to lodge his petition of appeal in the District Court which handed down the decision and the District Court shall immediately forward the same to the High Court."

*Then, after referring to Rules 2 and 4 (1) and (2) of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1963, Government Notice No. 312 of 1964, the **Court concluded that attachment of a copy of judgment (or decree) along with the petition of appeal is not a legal requirement in instituting appeals to the High Court on matters originating from the Primary Court....***" (Emphasis added)

Since the applicant claimed that, he failed to file his appeal timely because he delayed obtaining copies of proceedings and judgment due to sickness, but according to the above authority, those documents were not mandatory in the filing of the appeal. He was only required to file a petition of appeal. In that regard, as far as time is concerned, I do not find any plausible cause that delayed the applicant to file his appeal timely.

Coming to the issue of illegality, the applicant submitted that, the District Court raised and deliberated on issues that were not dealt with at the trial court. He did not expound further rather than just submitting that, at the trial court there was only one issue as to whether there was a contract between the parties. He did not elaborate on what new issues the District Court raised that prejudiced him.

In the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha (unreported), the Court of Appeal expounded that, illegality has to be apparent on the face of record not that which will require scrutiny of the proceedings and long drawn arguments.


In the matter at hand, it has to be noted that, the applicant filed four grounds of Appeal at the District Court, and in determining them, the Court raised four issues concerning the grounds raised and determined them. Since the applicant did not elaborate further on his illegality on the exact new issues allegedly raised, I fail to grasp what miscarriage of justice was occasioned to him for this court to extend time on the ground of illegality.

For the reasons stated hereinabove, I find this application to be without merit and proceed to dismiss it with costs.

It is so ordered.

DATED and delivered at **ARUSHA** this 26th day of March 2024




J.C. TIGANGA
JUDGE