

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SUB-REGISTRY OF GEITA**

**AT GEITA**

**MISC.CIVIL APPLICATION NO. 4673 OF 2024**

*(Originating from Civil Appeal No. 20 of 2022 of the Geita District Court, Arising from Civil Case No.59 of 2022 of the Katoro Primary Court)*

**EMAKULATA TARIMO.....APPLICANT**

**VERSUS**

**KAPAYA DOTO.....RESPONDENT**

**RULING**

*Date of last order:04/04/2024*

*Date of Ruling:09/04/2024*

**MWAKAPEJE, J.:**

This ruling arises from an application seeking leave to extend time within which to file a petition of appeal beyond the stipulated period. The application is made pursuant to section 25(1)(b) of the Magistrates Court Act, Cap.11 R.E. 2019, and is supported by a chamber summons and affidavit.

The crux of the matter underlying this application is as follows: The Applicant, subsequent to borrowing from the Respondent, was ordered by the Primary Court of Katoro in Civil Case No. 59 of 2022 to pay the Respondent the sum of **TZS 18,400,000.00**. Dissatisfied with the aforementioned decision, she endeavoured to challenge it by means of an appeal to the District Court of Geita in Civil Appeal No. 20 of 2022, which,

per the decision rendered on 07 October 2022, was not in her favour. Subsequently, the Applicant sought recourse in the High Court, only to realise that she had surpassed the prescribed time, thus necessitating the present application.

In her affidavit, the Applicant deposed that the cause of her delay in lodging her appeal in a timely stemmed from the exigencies of her health condition. Following the pronouncement of the judgment and decree by the District Court, the Applicant found herself in a state of severe illness, requiring urgent medical attention at Mawenzi Referral Hospital in Kilimanjaro.

She maintained that her affliction with diabetes, a chronic ailment of longstanding duration, was the very factor impeding her ability to adhere to the prescribed timeline for filing her appeal. She supported her contention with the letter from Mawenzi Hospital, bearing Reference No. Ref.No.AC.109/130/01/78 dated 10 February 2023.

On the other hand, the Respondent, in his counter affidavit, adamantly refuted the contentions put forth by the Applicant in her affidavit. He explicitly asserted that the Applicant's purported illness commenced on 10 February 2023, and further contended that she has failed to meticulously count each day of delay from the aforementioned date until now.

Subsequent to the order for the hearing of the application on 14 March 2024, the Applicant prayed that the matter be disposed of through written submissions, a prayer which was granted by this Court. Pursuant to the order enshrined within the scheduling order, the Applicant was directed to file her submission on or before 21 March 2024, with the Respondent to proffer a reply by 28 March 2024 and a rejoinder, if any, was to be filed by the Applicant on or before 4 April 2024.

However, when the matter was brought forth for necessary orders on 4 April 2024, much to the consternation of this Court, the Applicant flagrantly flouted the orders outlined within the scheduling order. She, contending that she had yet to be furnished with the counter affidavit, implored this Court for an extension of time to compose her written submission in chief.

Conversely, Mr Beatus Emanuel, a learned advocate for the Respondent, apprised the Court that, notwithstanding the filing of their reply written submission based on the Applicant's affidavit, they had not been duly served with the Applicant's written submission. Consequently, he prayed to this Court for appropriate orders in the circumstance.

It is axiomatic within the realm of our legal jurisprudence that the failure to adhere to the directives of a court's scheduling order constitutes a non-

appearance. This was a situation which was well articulated by the Court of Appeal in the case of **Godfrey Kimbe vs Peter Ngonyani** (Civil Appeal 41 of 2014) [2017] TZCA 1 (21 July 2017), when citing the cases of **National Insurance Corporation of (T) Ltd & another v. Shengena Limited**, Civil Application No. 20 of 2007 and **Patson Matonya v. The Registrar Industrial Court of & another**, Civil Application No. 90 of 2011 (both unreported). Particularly in the case of **National Insurance Corporation of (T) Ltd & another v. Shengena Limited (supra)**, it was observed that:

*"The Applicant did not file submission on the due date as ordered. Naturally, **the court could not be made impotent by a party's inaction**. It had to act. ... it is trite law that failure to file submission(s) is tantamount to **failure to prosecute one's case**." [Emphasis supplied]*

It is incumbent upon the parties involved to be cognizant of the irrefutable principle that the court's orders are sacrosanct and are to be adhered to in their entirety, absent any subsequent order to set it aside by the ordering court or a superior court in the judicial hierarchy. In the absence of such an order to set it aside, the order stands inviolable.

I am compelled to point out that the conduct exhibited by the Applicant, who petitioned for the disposal of her application via written submissions

yet failed to execute her entreaty, undermines the authority and integrity of this honourable Court, which it is my solemn duty to safeguard with zealous devotion. As has been ordered on numerous occasions by this venerable Court, and as in the **Ngonyani** case (*supra*), the act of the Applicant's failure to file her submission implies her failure to prosecute her case. I shall, therefore, proceed forthwith with the ruling as if it did not appear.

The Respondent, in response to the assertions, delineated within the Applicant's affidavit pertaining to the factors underlying the delay, avers that the Applicant has failed to furnish a meticulous account of each day surrounding the period of her delay. According to the Respondent, the Applicant remained relaxed from the inception of her ailment, as documented in the letter from Mawenzi Hospital dated 10<sup>th</sup> February 2023, until 21<sup>st</sup> February 2024, at which juncture she elected to institute the present application. In buttressing his position, the Respondent referred to the case of **Airtel Tanzania Limited v. Misterlight Electrical Installation Co. Limited & Another** (Civil Application 37 of 2020) [2021] TZCA 517 (21 September 2021).

As a matter of principle, the grant or refusal to extend time is the discretionary power of the court, which discretion, however, has to be

exercised judiciously. Consideration in exercising the said discretion is pegged on sufficient cause advanced by the Applicant. Factors to consider on the sufficient cause as was stated in the case of **Tanga Cement Co. Ltd vs Jumanne D. Masangwa & Another** (Civil Application 6 of 2001) [2004] TZCA 45 (8 April 2004), include:

- "(i) whether or not the application has been brought promptly;*
- (ii) the absence of any or valid explanation for the delay;*
- (iii) lack of diligence on the part of the Applicant."*

Moreover, in the case of **Tanga Cement Co. Ltd vs Jumanne D. Masangwa & Another** (*Supra*), reference to what amounts to good cause was made to the case of **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (CAT) (unreported), which, in turn, drew inspiration from the decision rendered in the case of **C.M. Van Stillevoeldt v. El Carriers Inc.** (1983) 1 All ER 699, wherein it was expounded that:

*".....in my judgment, all the relevant factors must be taken into account in **deciding how to exercise the discretion to extend time.** Those factors include the **length of the delay, the reasons for the delay, whether there is an arguable case on appeal, and the degree of prejudice to the defendant if time is extended**"[Emphasis supplied]*

These factors have been underscored in a plethora of judicial pronouncements in the land requiring an Applicant to meticulously justify each day of delay. Notable among these decisions are the cases of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011); **Paradise Holiday Resort Ltd vs Theodore N. Lyimo** (Civil Application No .435/01 of 2018) [2019] TZCA 670 (17 May 2019); and **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported). Particularly in the case of Lyamuya Construction Co. Ltd, it was articulated that:

*"i. the length of the delay;*

*ii. the reasons for the delay;*

*iii. whether the Applicant was diligent;*

*iv. the degree of prejudice the Respondent stands to suffer if time is extended;*

*v. whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged"*

In the instant application, the Applicant, within her sworn affidavit, asserts that subsequent to the pronouncement of the District Court's decision, she suffered a severe illness. She avers to having sought medical attention at Mawenzi Referral Hospital commencing on 13 December 2022. This is

evidenced by the missive bearing reference No. Ref.No.AC.109/130/01/78 dated 10 February 2023, attesting to her indisposition. However, the question posited by this Court pertains to the activities and whereabouts of the Applicant during the interregnum from 07 October 2022, upon the rendition of the District Court's decision, until 13 December 2022, when her medical treatment commenced, given the fact that she had 30 days for appeal as stipulated under section 25(1)(b) of the Magistrates Act, Cap 11 R.E. 2019. Regrettably, the Applicant has not proffered any elucidation in this regard.

Moreover, while the missive emanating from Mawenzi Referral Hospital is dated 10 February 2023, there is no explication concerning the events transpiring subsequent to said date up until the filing of this application in this Court on 21 February 2024. The extent to which the Applicant observed a regimen of complete bed rest therapy remains undisclosed. To embark upon conjecture regarding these matters would be an impermissible exercise for this Court. Nonetheless, no external circumstances beyond the purview of the Applicant's powers that could have conceivably impeded the timely execution of requisite actions have been adduced. Consequently, the reasons advanced by the Applicant to justify the delay of more than 12 months are deemed inadequate to



warrant the grant of an extension of time. I, therefore, concur with Mr. Beatus that the Applicant has failed to provide a cogent accounting for each day of the delay.

In the upshot, this Court has meticulously evaluated all pertinent factors requisite for the grant of an extension. Given the prevailing circumstances, this Court concludes that the Applicant has failed to advance sufficient cause for her delay. Consequently, this application lacks merit and is dismissed, with costs.

It is so ordered.



  
**G.V. MWAKAPEJE**  
**JUDGE**  
**09/04/2024**

This ruling is delivered this 09 April, 2024 in the presence of the Applicant in person.



  
**G.V. MWAKAPEJE**  
**JUDGE**  
**09/04/2024**