

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI SUB REGISTRY

AT MOSHI

MISC. CIVIL APPLICATION NO. 84352 OF 2023

(C/F Civil Appeal No. 7 of 2023 of Moshi District Court, Originating from
Shauri la Madai Na. 197/2022 of Moshi Urban Primary Court)

ASHA ALLY JUMA APPLICANT

VERSUS

PETER FRANCIS MASSAWE 1st RESPONDENT

RAMADHANI S. JUMA 2nd RESPONDENT

ATHUMAN R. MPANDA 3rd RESPONDENT

ATHUMAN S. MPANDA 4th RESPONDENT

RULING

28/03/2024 & 08/04/2024

SIMFUKWE, J



This is an application for extension of time to file an appeal out of time against the judgment of the District Court of Moshi in Civil Appeal No. 7 of 2023. The application was preferred under **section 25 (1) (b) of the Magistrates Courts Act**, [Cap11 R.E 2019] and **section 14(1) of the Law of Limitation Act**, [Cap 89 R.E 2019]. It was supported by an affidavit dully sworn by the applicant, Asha Ally Juma and resisted by the respondents' joint counter-affidavit.

The genesis of this application is traced from Civil Case No. 197/2022 of Moshi Urban Primary court (trial court). In the said case, the applicant together with the 2nd, 3rd and 4th respondents were sued by the 1st respondent claiming among other things the recovery of a total sum of TZS 4,000,000/= being a purchase price of a piece of land sold to the 1st respondent after discovering that, the same land had been sold to someone else. The trial court decided against the applicant herein. Aggrieved by the decision of the trial court, the applicant unsuccessfully appealed to the District Court of Moshi. Being aware that time to file the appeal had lapsed, the applicant is seeking for orders that:



- a) This honorable court be pleased to extend time within which to file an appeal before this court against the judgment and Decree in Civil Appeal No. 07 of 2023 of the District Court of Moshi at Moshi, delivered on 06/09/2023 before Hon. R.G. Olambo-SRM.*
- b) Costs abide by events.*
- c) Any other relief(s) this honorable court may deem fit, just, proper, equitable and fair to grant.*

At the hearing, the applicant was represented by Mr. Philemon Shio, learned counsel whereas, the respondents had the service of Mussa K. Mziray, learned counsel.

Substantiating the application, Mr. Shio adopted the supporting affidavit of the applicant and submitted that when the applicant was waiting to be supplied with copies of judgment and proceedings, she got serious sick and was admitted at St. Joseph Designated Hospital on 4th of October, 2023 and discharged on 18/10/2023. That, the applicant had a severe chest pain and urinary problem.



Mr. Shio submitted further that, the applicant was supplied with the copies of judgment on 25th September 2023 and the copy of proceedings on 6th October 2023 which was already out of time. In that regard, Mr. Shio stated that the applicant is seeking the extension of time on two reasons: sickness and late supply of copies of judgment and proceedings.

Mr. Shio submitted further that, it is trite law that, when one is seeking leave of the court to extend time to file appeal out of time, he must account for each day of delay or give sufficient reasons for the delay. To cement his assertion, he referred the case of **Godwin Ndewasi and Karoli Ishengoma vs Tanzania Audit Corporation [1995] T.L.R 200** which held that:

"The rule of the court must be prima facie be obeyed.

And in order to justify extending time during which some steps in proceedings to be taken, there must be some material on which the court can exercise its discretion."

Also, the learned counsel referred the case of **Joseph Paul Kyauka and Catherine Kyauka Njau**, Civil Application No. 7/2016, CAT at ARUSHA (unreported) and the case of **Lyamuya Construction Co. LTD vs. Board**



of Trustee of Young Women's Christian Association, Civil Application No. 2 of 2010. He explained that the cited cases above set the principles which can be applied by the court in assessing if there were good cause that occasioned the delay, that:

- a) The applicant must account for all period of delay.*
- b) The delay should not be inordinate*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of action that he intends to take.*
- d) If the court feels that there are other reasons, such as existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.*

Based on the above authorities, Mr. Shio, believed that the applicant has given sufficient reasons which warrant this court to exercise its discretion to grant extension of time to the applicant to file her appeal out of time. The learned counsel continued to state that, the applicant failed to lodge the appeal after she had received the copies of judgment and proceedings due to sickness. That, the applicant was admitted in Hospital on 4th



October 2023 and she was discharged on 18th October 2023. In that regard, Mr. Shio insisted that the delay was out of applicant's control.

In addition, the learned counsel submitted that, after being supplied with copy of judgment, the applicant immediately started to apply for the extension of time. Mr. Shio reiterated the grounds set forth in the applicant's affidavit and urged this court to allow the application.

Contesting the application, the respondents urged this court to adopt their joint counter affidavit to form part of their submission. They continued to submit that, this application is baseless and unfounded on the reason that the applicant has completely failed to advance sufficient reasons for extension of time to file appeal out of time. That, an application of this nature requires the applicant to advance sufficient reasons for the court to enlarge time. That, in the present application there is nothing advanced by the applicant for the court to use its discretionary powers conferred to it to enlarge time.

The respondents continued to aver that, at paragraphs 7 and 12 of the applicant's affidavit, there is a contradiction as to when the applicant actually was served with the copy of judgment. That, at paragraph 7 she



stated that a copy of judgment was supplied to her on the 25th day of October, 2023. At paragraph 10 (sic) she stated that the copy of judgment was supplied to her on 25/09/2023. In both paragraphs she stated that when she was supplied with copy of judgment, she was already out of time which was not correct. They explained further that, the copy of judgment of the first appellate court was certified on 27/09/2023 ready for collection. That, at the time when the said copy was certified, time to appeal had not yet lapsed but for reasons known to the applicant, she denied her right to appeal within time.

Responding to the argument by the applicant that the copies of judgment and proceedings of the first appellate court were supplied to the applicant on 25/9/2023 and the proceedings on 6/10/2023, the respondents were of the opinion that if the same was supplied to her on 25/09/2023 it was within time but the applicant failed to appeal on time.

Submitting on the reason of sickness as a ground for extension of time, the respondents argued that such reason is baseless. They explained that for sickness to be a ground for extension of time, it must be established, not only that the said person was sick but also that the said sickness was an



impairment from attempting the pursuit. The respondents stated that, although under paragraph 5 of the applicant's affidavit the applicant stated that she was suffering from fibroids, there is no proof of medical report as she was admitted for operation and she never mentioned when such disease happened and when it was treated by way of operation.

Countering the 9th paragraph of the affidavit of the applicant which is to the effect that the applicant was admitted for treatment and checkup at the hospital since 4/10/2023 until when she was discharged, the respondents argued that there is no proof of when the applicant was discharged. The respondent averred that; they could not be able to scrutinize the purported medical report as the same was not supplied to them when they were served with a copy of affidavit. The respondents submitted that in an application for extension of time the applicant has to account for each day of delay involved and that failure to do so would result in the dismissal of the application. To cement their argument, the respondents cited the case of **Ludger Bernard Nyoni vs National Housing Corporation**, Civil Application No. 372/01 of 2018. (Tanzlii).



Based on the above authority, the respondents commented that, the applicant has failed to account for each day of delay from 25/10/2023 when she was supplied with copy of judgment to 22/11/2023 when she lodged this application which is almost 27 days.

Furthermore, the respondents contended that the case of **Godwin Ndewesi and Karoli Ishengoma** (supra), the case of **Joseph Paul Kyauka Njau and Catherine Paul Kyauka Njau** and the case of **Lyamuya Construction Co. Ltd** (supra) which were cited by the applicant, are not supporting her application since the applicant never stated any sufficient reason for the delay.

The respondents concluded by urging this court to dismiss this application with costs.

In his brief rejoinder, Mr. Shio maintained his submission in chief and added that, the applicant in her submission in chief clearly stated as to why she was not able to file her appeal within time as she was supplied with the copies of the proceedings and the judgment, out of time. That, the applicant while in the process of appealing on 04/10/2023 two days before



due date she was admitted at St. Joseph Council Designated Hospital after being serious sick and was discharged on 18/10/2023.

Moreover, the learned counsel submitted that, it is the trite law and procedure that sickness if established shall be a ground for extension of time. That, the applicant has established this ground by attaching the copy of report from the hospital in her affidavit.

Having heard the rival submissions of both parties and examined records of this case, the issue is **whether this application has merit.**

It is trite law that, extension of time can only be granted upon good cause being shown and where the delay has not been caused or contributed by the dilatory conduct on part of the applicant. There are numerous decisions to that effects including those cited by the parties to this application. In the case of **Brazafric Enterprises Ltd vs Kaderes Peasants Development (PLC) (Civil Application 421 of 2021) [2022] TZCA 624 (13 October 2022)** [Tanzlii] at page 8 & 9 the Court of Appeal stated that:

"It is noteworthy that there is no universal definition of the term 'good cause'. Therefore, good cause may mean among



other things, satisfactory reasons of delay or other important factors which needs attention of the Court, once advanced may be considered to extend time within which a certain act may be done..."

Therefore, any party who seeks before any court an order for extension of time should establish good cause for his/her delay taking into consideration the length of delay, the reason for the delay and the duty to account for each day of delay.

Back to the application at hand; on the ground of late supply of the copy of judgment and proceedings as stated under paragraph 7 of the applicant's affidavit; according to the records of this application, it is undisputed that the impugned decision was delivered on 6th September, 2023. The copy of judgment attached to the application was certified on 25th September, 2023. I am aware that in computing time to appeal, time spent to be supplied with copy of judgment and proceedings should be excluded.

In this matter, with all due respect to Mr. Shio, when the applicant was supplied with the copy of judgment the time to appeal to this court had not lapsed yet. Counting from 6th September 2023 when the judgment was



delivered to 25th September 2023 when the judgment was certified, only 19 days had lapsed. Thus, the applicant had time to file her appeal in time and the reasons that the applicant was supplied with the copy of judgment and proceedings lately, are unfounded.

Turning to the reason of sickness as a ground of extension of time as stated under paragraph 8, 9, 10 and 11 of the applicant's affidavit, I am aware that sickness is a good ground for extension of time. However, such reason must be established through evidence that the sickness happened at the time when the applicant was required to take action.

In the matter at hand, the applicant alleged that she was admitted in hospital on 4th October 2023 and she was discharged on 18th October 2023. With all due respect to the applicant, her sickness occurred when time to appeal had not yet expired as 30 days were to expire on 25th October 2023. Thus, the applicant failed to account for days of delay from 25th October 2023 when the time to appeal was due, to 24th November 2023 when she filed the instant application. It is my strong opinion that the applicant's sickness could not prevent her from taking action within time.




For the aforementioned reasons, I find no reason for extending time to appeal to the applicant. Consequently, I hereby dismiss this application with costs.

It is so ordered.

Dated and delivered at Moshi this 8th day of April 2024.




S. H. SIMFUKWE
JUDGE
08/04/2024