

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB- REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 598 OF 2023

(Arising from Civil Appeal No. 20 of 2018 of the District Court of Temeke and PC Civil Appeal No. 79 of 2028.

ENILA BASKELI KYANDO APPELLANT

VERSUS

VERONICA SABAL RESPONDENT

RULING

16th & 18th April, 2024

MWANGA, J.

The applicant is basically seeking extension of time in order to file an application to obtain the certificate on point of law to appeal to the court of appeal. The application is brought pursuant to sections 14 of the Law of Limitation Act, Cap 89 R.E 2019, Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 14 and section 95 of Civil Procedure Code, Cap. 33 R.E 2019. The application is supported by sworn affidavit of the applicant, Enila Baskeli Kyando.

The application was argued by written submissions which both parties filed the same in compliance of scheduling court order. According to the deponed facts, the applicant filed an application for leave to appeal to the Court of Appeal in matters originating primary court in Misc. Civil Application No. 255/01 of 2020. However, the applicant did not obtain the certificate on the point(s) of law according to law. As a result, the court marked the application withdrawn on 13th June, 2022 in terms of Rule 58(3) of the Tanzania Court of Appeal Rules, 2009.

The application was not made until on 10th October, 2023. The reasons given for the delays were that; **one** the applicant travelled to Njombe on 29th June, 2022 to attend her father who fell sick of high blood pressure who passed away on July, 2023. **Two**, the applicant had no lawyer to assist her to file an application. **Three**, the applicant has overwhelming chances of successes.

The respondent, on the other hand disregarded the applicant's reasons and raised the following contentions. **One**, the applicant has failed to adduce sufficient reason to warrant the extension of time. Because, no hospital admission sick sheet nor certificate of death. The respondent insisted that, delay even a single day must be accounted for, otherwise

there would be no proof of having prescribed period within which steps have to be taken. To bolster his argument, the respondent cited the case of **Dsaid Nazzor Zahor Versus Zahor Abdallah Elnasari**, Civil Application No. 14 of 2007 (HCT) and **Ally Salum Said Versus Iddi Athuman Ndaki**, Misc. Civil Land Case Application No. 718 of 2020 (HCT). **Two**, the applicant failed to prove that there is illegality of the decision to be challenged.

In rejoinder, the applicant insisted that she has expressed in her affidavit about the irregularity occasioned in the impugned decision of the court. Likewise, she has demonstrated the death of her father.

I have considered the submissions of the parties. Even though extension of time is discretionary powers of the court, the same has to be exercised cautiously and by following the rules of reason and justice. That was the position held by the court in the case of **Heritage Insurance Company Ltd Vs Sabians Mchau & 2 Others**, Civil Application No. 284/09 of 2019 (CAT-Unreported).

It is also true that, for the applicant to be granted extension of time, he or she must demonstrate sufficient reasons. Though sufficient reasons

are not defined but in a number cases, the Court has developed some factors to be considered as constituting good cause, namely, timeliness of taking action, the length of the delay, illegality, and delay in being supplied with the necessary documents. See cases of **Moses Muchunguzi vs. Tanzania Cigarette Co. Ltd**, Civil Reference No. 3 of 2018, and **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, Civil Application No. 6 of 2001 (All unreported), to mention just a few.

Nevertheless, the reason for the delay is a question of facts that differs depending on the circumstances of each case; Now, after having gone the affidavit and submissions of the applicant, timeliness of taking action is not counted for. The law requires that each day of delay must be counted for, otherwise there will be no need to prescribe the period within which steps have to be taken. See the cited cases of **Dsaid Nazzor Zahor Versus Zahor Abdallah Elnasari** (Supra) and **Ally Salum Said Versus Iddi Athuman Ndaki**(Supra).

Again, as rightly held by the respondent the application is liable to be defeated because the applicant failed to count each day of delay. Her argument that she travelled to Njombe to attend her sick father who is now deceased are serious assertions which needed to be substantiated. No

death certificate or anything evidencing the death of the deceased and no any admission in hospital It should be recalled that, the decision of the court of appeal was delivered on 13th June ,2022 and the application to this court was done on 10th October, 2023 which is almost one year and four months. It was crucial for this court to be told when was the deceased admitted, and at which hospital because it is such a long duration which must be accounted for.

As to the question of irregularity, this court is also of the view that once shown is a good reason for extension of time. See the cases of; **Principle Secretary, Minister of Defence and the National Service Versus D.P Vallamhia** (1991) TLR 387 and **Lyamuya Construction Campany Ltd Versus Board of Registered Trustees of Young Women Christian**, Civil Application No.2 of 2010(CAT- unreported). In the cited case of the **Principal Secretary Ministry of Defence and National Service v. Devram Valambia** (Supra) stipulated that the illegality of the impugned decision must be clearly visible on the face of the record. The cases of **Lyamuya Construction Co. Ltd v. Board of 8 Registered Trustee of Young Women's Christian Association of**

Tanzania,(unreported) held that the point of law at issue must also be that of sufficient importance and apparent on the face of the record.

The applicant will agree with me that, this crucial condition was not fulfilled for the court to consider her application. She only ended up mentioning it.

Apart from that, much reliance should also be given to the case of **African Banking Corporation (T)Limited Versus George Williamson Limited** (supra) where the court held that the applicant must exercise some diligence on the matter, which means the application was brought promptly or at least the court persuaded that there were serious steps or effort by the applicant to take action. The application shows that the applicant has demonstrated lack of seriousness and high level of inept in approaching this matter.

That being said and done, the application is dismissed in its entirety. I have looked into the circumstances of the case, each party shall bear its costs.

Order accordingly.



H. R. MWANGA

JUDGE

18/04/2024