

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

**ARUSHA SUB REGISTRY**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 101 OF 2023**

**(C/F CIVIL CASE No. 63 of 2020 in the Resident Magistrate Court of Arusha at Arusha)**

**MATTOR AND R INVESTMENTCOMPANY LIMITED..... APPLICANT**

**VERSUS**

**ANDREW GAMBA..... RESPONDENT**

**RULING**

**15/4/2024 & 30/04/2024**

**NDUMBARO, J**

Before me, is an application for an extension of time brought by the applicant under the provision of section 14 (1) of the Law of Limitation Act Cap 89 R.E 2019. In this application, the applicant is seeking an extension of time to file an appeal against the decision of Resident Magistrate Court of Arusha Civil Case No. 63 of 2020.

The application is further supported by an affidavit duly sworn by the applicant where a series of events have been narrated culminating in the

delay of the applicant to file his appeal within time. The respondent, on the other hand, opposed the application through his counter affidavit.

The applicant's affidavit is that the applicant herein was the defendant in Civil Case No. 63 of 2020 before the Resident Magistrate Court of Arusha at Arusha which proceeded interparty. The applicant went on to state that the judgment in the above-captioned matter was delivered on the 15<sup>th</sup> day of June 2023 before Honourable Regina C. Oyier in his absence and a copy of the judgment was not made available for collection on the date of judgment. The applicant made a formal request and follow-up for a copy of the judgment and decree till 29<sup>th</sup> September 2023 when it was made available to him and on the same day uploaded the application. The application was out of time because lack of necessary documents which without it, an appeal could never be preferred.

Moreover, the applicant has also alleged that he intends to challenge the judgment the reason that the said judgment is tainted with illegalities mentioned in his proposed petition of appeal as follows;

- i. That learned trial magistrate grossly erred in law and fact by giving judgment in favour of the respondent based on incredible and unreliable evidence.
- ii. That learned trial magistrate erred in law and fact by abdicating herself from her legal duty to subject the entire evidence on record to objective scrutiny and as a result, she affirmed the debt for a plaintiff who never had locus stand against the appellant and on a contract which did not meet threshold requirement by the law for enforcing the contract.
- iii. That learned trial magistrate grossly erred in law and fact by failing to appreciate legal issues surrounding the dispute she arrived at a conclusion without proper rationale under the law.
- iv. That learned trial magistrate grossly erred in law and fact by her failure to consider the evidence given by the appellant side which raised many questions and paradoxes on the validity and justifiability of the claim.

The applicant prays for this court to grant an extension of time so that may file an appeal.

On the counter affidavit respondent claimed that the letter requesting a copy of judgment was not served to them; No proof on the date where the said necessary documents were issued to him and the applicant did not account for each day of delay hence intended appeal is devoid of merit.

On submission in support of his application, the applicant enjoyed the service of Advocate Yoyo Asubuhi and the respondent was presented by Advocate Frida Magesa.

The applicant's counsel submitted that his client intends to challenge the judgment delivered by the Resident Magistrate Court of Arusha at Arusha and raised four proposed grounds to be argued on the said appeal. The counsel argued they delayed filing the said appeal; however, the delay was due to reasons beyond the applicant's control. In arguing his application put forward two hypotheticals to guide the submission; -

- i) whether the application before you meet the legal threshold required to extend the time
- ii) whether the matter raised in the counter affidavit has any substance to refrain this court from issuing the prayer thought

On the first hypothetical argued, lateness was due to a lack of necessary documents which are the Judgment and decree, it was not laxity, it was beyond their control, taking into consideration that no appeal is preferable without a copy of the judgment and decree to be appealed against.

The applicant argued all required conditions for the court to grant an extension are met, in support of the argument cited a landmark case of **Mbongo Vs Shah** 1968 EA 93 reported, whereby the defunct EACJ established principle which was adopted by the Court of Appeal of Tanzania (CAT). CAT held that the court should consider the relevant facts in granting the extension of time which are; reasons for the delay, length of delay, arguable case and decree of prejudice of the other side.

On the length of delay, it was argued that the judgment was delivered on the 15<sup>th</sup> day of June 2023 whereas this application was filed on 29/9/2023, the reasons for the delay are sufficient and verified. The judgment and decree were not available on the date of its pronouncement. The applicant made a follow-up by writing two letters and it was supplied to him on 29/09/2023. Upon receipt, the applicant uploaded an appeal on the same day. The delay was counted for, it is not inordinate. In proposed grounds of appeal on the issue of locus stand and decree of prejudice will be determined on appeal. Further argued that, if the application is granted, the respondent will not be prejudiced as justice will be done.

In the second hypothetical, the applicant argued that, there is no legal requirement to serve the respondent with a letter requesting necessary documents. On the issue of the proof that the court was reminded with letters argued, the court document speaks, the judgment was issued on 29/09/2023. On the issue that the intended appeal is devoid of merit, there are four proposed grounds demonstrate the merit of the intended appeal. The Applicant prays for the interest of justice to be allowed to exercise its constitutional right of appeal.

**Opposing** the application, Ms Frida Magesa pray that, the respondent's counter affidavit to form part of her submission. Ms Magesa responding to the applicant's first raised hypothetical argued the applicant's prayer in chamber summons item "a" requesting this court to grant an extension of time to file a **petition** of appeal against the decision of the Resident Court of Arusha in the civil case No. 63/2020 is contrary to Order 39 rule 1 (i) (c) of Civil Procedure Code Cap 33. Therefore, the prayer is void of merit. The prayer ought to file a **memorandum** and not a **petition**.

Further faulted that, no letter was written by the applicant requesting necessary documents rather the applicant's counsel Yoyo Asubuhi requested the said copy for personal records. Argued three months to have a copy of necessary documents was not justifiable, the applicant did not come with an affidavit for the delay in issuing a copy of the judgment. The stamp upon verification of receipt of a copy of a judgment is not reliable, because it can be stamped by any. The delay is inordinate, the judgment was delivered on 15 /06/2023 the application was uploaded on 29/09/2023 and it was physically filed on 5/10/2023, the days not counted for.

The Ms Magesa argued the applicant failed to demonstrate sufficient reasons for the delay so this court granted an extension of time. In support of the argument cited a case of **Registered Trustees of Bakwata Vs Registered Trustee of Dodoma General Muslim Association** Civil Application No. 512/03 of 2019 CAT, page 11 which put down conditions to be considered by the court on granting an extension of time that;

- i. Applicant must account for all the periods of delay
- ii. The delay should not be inordinate
- iii. Applicant show diligence
- iv. Illegality of decision thought to challenge

Argued, the applicant's application failed to meet the above four thresholds. the delay is inordinate, the case ended on 15/6/2023, and the application was filed on 5/10/2023 it is laxity and wasting court time. The applicant is trying to shift the burden to the Court that, delayed on issuing a copy of the judgment without an affidavit proofing the delay. Therefore, the application is baseless to satisfy this court to grand extension of time. The cited case of **Mbogo Vs Shahof 1968**, favours the respondent's



argument that, the length of delay should be counted for for each day on which the applicant failed to do so.

Finally, the respondent argued the applicant has to pay the claimed amount, the application is devoid of merit, and be struck out with costs for lack of sufficient reasons.

In rejoinder, the applicant's counsel reiterated his submission in chief and argued, the respondent's arguments in opposition to the application are devoid of merit, sugar coated, theatrical and hypobaric. On the issue, that the appropriate application was a petition and not a memorandum, it is a fatal misconception, it is curable based on an overriding objective, and it cannot deny justice.

On the issue that the letter was written by an advocate and not the applicant, the advocate acted for the instruction of the applicant. Applicant faulted that respondent is impeaching court record on arguing that the judgment can be certified by any. The record speaks for itself, impeaching is an illusion. On the issue as to why the document was filed on 29/09/2024 and physically filed on 5/10/2023, argued, it was only 6 days later which is considered to be reasonable. On the issue that no sufficient reasons adduced by the applicant faulted that, lack of court documents is

sufficient reason because no appeal can be preferred without necessary documents, the **Registered Trustee** case (supra), supports the argument. The applicant argued the claim that we are avoiding debt will be discussed in the court of appeal.

The applicant finally argued the application before this court for an extension of time, the question is whether sufficient reasons were demonstrated to warrant an extension; on which considered it was demonstrated. Argued this is a court of justice, Justice cries so around and it is in the interest of Justice to be granted an extension of time.

Having considered the parties' submissions, the question for my determination is whether the applicant has exhibited good cause to warrant this court to grant the relief sought.

It is trite law that, an application for extension of time is entirely in the discretion of the Court to grant or refuse. This unfettered discretion however has to be exercised judicially and an overriding consideration is that there must be "sufficient cause" for doing so. What amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any or valid

explanation for the delay; lack of diligence on the part of the applicant and illegality.

In the instant application, the judgment which the applicant intends to challenge was delivered on the 15<sup>th</sup> day of June 2023 whereas this application was filed by the applicant on 29/09/2023. It has been a well-settled position of the law that, a party seeking for extension of time must sufficiently account for each day of delay. See the decision in the case of **Sebastian Ndaula vs Grace Rwamafe**, Civil Appeal No. 4 of 2014 CAT at Mbeya (Reported Tanzlii) where it was held that;

*"The position of this court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of delay."*

In accounting for the delays, Mr Yoyo's submission was to the effect that, ever since the applicant was aware of the judgment, he has made an effort to request copies of necessary documents with the intention to file an appeal to challenge the said decision till 29/09/2023 when it was supplied to him, and on the same day he lodged the application. Thus it was his argument that the effort made justifies the accounting of each day.

I respect the argument against the counsel for the respondent Ms Magesa argued the court stamp verifying the date of receipt of judgment and decree can be stamped by any but I agree with Mr Yoyo that, the court document can only be impeached by law.

Am aware of the exclusion of time spent by an applicant or plaintiff on awaiting Judgment. For ease of clarity, I wish to reproduce section 19 of the Law of Limitation Act Cap 89 R.E 2019 which states as follows;

"19. -(1) .....

*(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of the judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a **copy of the decree or order appealed from or sought to be reviewed, shall be excluded.***

*(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy*

*of the judgment on which it is founded shall be excluded.*

*(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.*

*(5) Where the court to which an appeal or application for leave to appeal or application for review is made, is satisfied that **it was necessary for the appellant or, as the case may be, the applicant, to obtain a copy of the proceedings of the relevant suit or proceeding before lodging or making the appeal or the application, the court may allow being excluded from the period of limitation prescribed for such appeal or application, the period requisite for obtaining a copy of the proceedings***

I have had enough time to go through the application at hand together with the rival submissions of the parties' advocates. Nevertheless, it was the observation of this court that, the applicant's counsel wrote a first letter requesting a copy of judgment and decree on 20 June 2023 and a reminder on 10 August 2023, the documents were issued to him on 29/9/2023 and the application for extension of time was uploaded on the same day.

From the above-narrated series of events, it is to the satisfaction of this court that the applicant herein had not slept over his right, he was prevented from lack of necessary documents to file his appeal, and once was supplied immediately filed this application for extension of time. The period during which the applicant awaits a copy of the judgment and decree is excluded under **Section 19 of the Law of Limitation Act** (Supra). In that regard, it is the firm view of this court that, the applicant is salvaged by the provision of Section 19 of the Law of Limitation Act Cap 89.

Mr. Yoyo has also alleged illegality as a reason for the grant of this application. I am certain that, a claim of illegality or otherwise of an

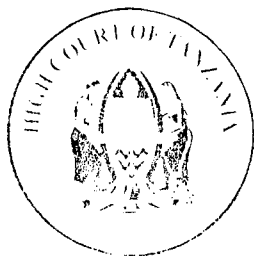
impugned decision has, all along, constituted a good cause for extension of time. In expounding the said illegalities, the counsel raised four proposed grounds demonstrating the merit of the intended appeal. In consideration as to whether illegality is sufficient to extend the time, the submission of the parties that there is the claim of transfer of debt needs to be determined in the court of appeal. The counsel has also challenged the transfer of the said debt. Guided by the arguments by parties in relation to the application under consideration, this Court is persuaded that the alleged illegality is apparent on the face of it and thus can also be discerned as a good cause for an extension of time.

With due respect, I wish to state that at this juncture, what this court needs to pronounce is only on whether sufficient grounds for the extension have been advanced by the applicant and any discussion to do with the intended appeal it is my finding that, the conversation is subject for another day.

In the result, I am satisfied that the applicant has shown sufficient reasons to warrant an enlargement of time to file his appeal. In that

regard, the intended appeal should be filed within fourteen (14) days from the date of delivery of this ruling. Costs to be in the Cause.

It is so ordered.



*D. D. Ndumbaro*  
**D. D. NDUMBARO**  
**JUDGE**  
**30/04/2024**