

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 411 OF 2023

(Arising from Civil Case No. 82 of 2015)

ELTEL TANZANIA LIMITEDAPPLICANT

VERSUS

GATI MASERO BUITER

t/a BOTECH PROJECT MANAGEMENT1ST RESPONDENT

RULING

02nd February & 09th May, 2024

BWEGOGGE, J.

The applicant herein instituted an application in this court praying for grant of extension of time within which the same may file a notice of intention to appeal against the judgment and decree of this court dated 06th June, 2023. The application is brought under section 11 of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] and supported by an affidavit of one Josephine Safiel, the counsel for the applicant.

The factual background of this case, albeit briefly, is as follows: Way back in 2105, the respondent herein commenced civil proceedings in this court against the applicant herein claiming for actual and general damages, among others, for breach of contract. On 06th June, 2023 this court entered judgment and decree in favour of the respondent for payment of sum of TZS. 150,000,000/= being general damages for breach of contract, among others. The judgment of this court was entered in absence of both parties. It was not until 26th June, 2023 that the applicant became aware of the decision of this court and obtained the copy of judgment on 19th July, 2023. The applicant was aggrieved by the liability imposed on her in favour of the respondent; hence, this application.

The applicant was represented by Mr. Joseph Ndazi, learned advocate, and the respondent enjoyed the services of Mutakyamirwa Philemon, learned advocate. The application was argued by written submissions.

In elaborating the matters deposed in the affidavit supporting the application herein, Mr. Ndazi commenced by acknowledging that extension of time is discretionary power vested to this court exercised upon the applicant furnishing good cause. The cases, **Vodacom Foundation vs. Commissioner General TRA** (Civil Application 107 of 2020) [2020] TZCA 1797 and **Lyamuya Construction Company**

Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania (Civil Application 02 of 2010)

[2011] TZCA 4 were cited to bring home the point.

Further, the counsel submitted that the impugned decision of the trial court sought to be challenged was delivered in absence of the parties herein contrary to the law. That the applicant became aware of the delivery of judgment through an update on the Judicial Mobile App on 26th June, 2023. That the report on the JSDS indicated that the case was dismissed after full trial implying that the applicant was a successful party. However, upon obtaining the copy of judgment on 19th July, 2023, the applicant apprehended that the court entered decision in favour of the respondent whereas she was liable to pay huge amount of damages to the respondent for breach of contract. She sought legal advice and on 28th July, 2023 and advised to appeal against the decision. Promptly, on 02nd August, 2023 the applicant lodged this application.

In substance, the applicant invited this court to consider the following grounds for grant of extension sought: **One**, the judgment was delivered in absence of the parties without notice to the parties contrary to Order XX, rule, 1 of the CPC. **Two**, the judgment of the court is manifestly

contrary to the evidence adduced by parties herein. **Three**, the award of compensation and damages doesn't tally with evidence on record.

In sum, the counsel argued that the delay occasioned was the applicant's fault. That the applicant acted diligently upon being aware of the impugned decision. Hence, this court be pleased to grant the extension sought based on good cause furnished.

On the other hand, Mr. Philemon vehemently contested the application herein. He contended that a total of 39 days had elapsed since the applicant became aware of the decision of the trial court on 06th June, 2023 to the date of filing of the application herein on 03rd August, 2023 of which were not accounted for. That the delay is an inordinate one. The counsel referred the mind of this court to the cases cited by the applicant in insisting that the applicant ought to furnish good caused for delay, but failed to discharge the obligation. The cases of **Wambele Mtumwa Shahame vs. Mohamed Hamis** (Civil Reference No. 08 of 2016 [2018] TZCA 39 and **Salum Sururu Nabhan vs. Zahor Abdul Zahor** [1988] TLR 41 were cited to reinforce the point. The counsel prayed this court to dismiss the application herein for want of merit.

In rejoinder, the applicant's counsel replicated the submission in chief which I find needless to reiterate herein.

The question to be resolved is whether the application herein is merited.

Primarily, the provisions of section 11(1) of the Appellate Jurisdiction Act enjoins this court with discretionary power to extend the time for giving notice of intention to appeal from a judgment of this court notwithstanding that the time for giving the notice or making the application has already expired. As rightly conceded by the applicant's counsel, the extension of time is granted for sufficient cause. See the cases; **Vodacom Foundation vs. Commissioner General TRA** (supra); **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra); **Wambele Mtumwa Shahame vs. Mohamed Hamis** (supra) ; **Attorney General vs. Oysterbay Villas Limited & Another** (Civil Application 299 of 2016) [2017] TZCA 146; **Dar Es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (unreported); and **Tanga Cement Company Limited vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported) among others, in this respect.

Particularly, in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian**

Association of Tanzania (supra), the Apex Court formulated the following guidelines;

- 1. The applicant must account for each and every day of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*
- 4. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

The reasons furnished by the applicant's counsel for grant of extension may be summed up as follows: **First**, the decision was delivered in her absence. **Secondly**, the JSDS report implied that the decision was given in her favour as the suit was marked dismissed. Hence, the applicant had no reason to act promptly. However, when she obtained the copy of judgment belatedly, she discovered that the decision was given in favour of the respondent for payment of substantial amount of damages. By then the time to lodge notice had elapsed. **Thirdly**, the judgment was delivered without the applicant being served with notice to appear. She alleged that the decision was given in the absence of the parties herein contrary law. This deposition featured in the supporting affidavit, in substance, amounts to plea of illegality.

I have anxiously perused the record of this case. It is gleaned from the decree issued by this court that the decision of this court was made in the absence of both parties but the record management officer. The respondent's counsel has not contravened the allegation that no notice was issued to the parties in compliance with the provisions of Order XX, rule, 1 of the CPC. Hence, the complaint made by the applicant has substance. The law is clear in that the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged, amount to good and, or sufficient cause for grant of extension of time. In the circumstances, the applicant herein, having substantiated his plea of illegality, is not obliged to account for each day of delay.

Moreso, a print out from JSDS entails that the suit in question was dismissed upon full trial. This document was not disputed by the respondent. Hence, the argument that the report implied that the respondent lost the case; hence, the applicant had no reason to act diligently in obtaining court document and file the intended notice has substance as well.

In view of the foregoing, I find that the applicant has furnished sufficient cause for grant of extension of time sought. I hereby grant the application

herein. The applicant to file the intended notice of appeal within 14 days from the date of this decision.

I so rule.

DATED at **DAR ES SALAAM** this 09th day of May, 2024.



O.F. BWEGOG
JUDGE