

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

MISC. APPLICATION

REF NO. 20240109000000456

(Arising from Civil Appeal No. 08 of 2023 at Tarime District Court, Originated from Civil Case No. 264 of 2022 Tarime Urban Primary Court)

BETWEEN

PHINYA GROUP OF COMPANIES APPLICANT

VERSUS

LAURENT ANICET 1ST RESPONDENT

MONICA ANICET MAGUTU..... 2ND RESPONDENT

NELBERT NAOLOS TWEVE..... 3RD RESPONDENT

RULING

9th & 30th May, 2024

M. L. KOMBA, J.:

This is an application for extension of time to appeal out of time against the decision of Tarime District Court in Civil Appeal No. 8 of 2023. The application is premised under section 25(1) (b) of the Magistrates' Courts Act, Cap 11 R. E 2019 and is supported by an affidavit sworn by the counsel for the applicant, Ditrick Terry Raphael Ishabairu. Respondents filed counter affidavit to contest the same.

When the matter was ready for hearing, applicant was represented by Mr. Ditrick Ishabairu and respondents had a legal service of Mr. Juma Mwita, both learned brothers from the bar.

Arguing in support of the application, Mr. Ishabairu prayed the applicant's affidavit to be adopted and form part of his submission. He started with a short history that on 25/11/2023 applicant while within time to appeal, he appealed and the lodged documents through electronic case management system (*ecms*) in Tarime District Court. Surprisingly, on 28/11/2023 applicant received information via *ecms* that the appeal was rejected with directives that the same be file direct to High Court. On the same date the applicant filed this application. It was his submission while noting that the law is clear for matter originating from Primary Court, the appeal against the decision of the District Court to High Court is filed in District Court which entertain the matter as per section 25 (3) of Cap 11. The said appeal has to be preferred within 30 days from the date of decision. It was his submission that applicant managed to file an appeal on time but the appeal was rejected from the system (*ecms*). Following that rejection, he said the applicant failed to file an appeal at the High Court within 30 days as required due to the response in *ecms*. He goes on submitting that by the time the applicant

files her appeal he was late for one day as elaborated in his affidavit and pray this court to note that, one day which applicant delayed was not negligent but the court system which demand process contrary to the law as witnessed via annexure. He prayed the application be granted.

Resisting the application, Mr. Mwita bitterly submitted that the applicant is late for 70 days. The decision which the applicant intend to appeal was delivered 27/10/2023. The application was filed on 09/01/2024. It is more than 70 days since decision. The Appeal process has never changed as purported by the applicant; the procedure is the same as per section 25 of Cap 11. He elaborated the process then lamented that applicant has no proof that he filed an appeal in District court within time as prescribed by law. Further attacking the application, he submitted that the applicant shows her negligent of the high class that he was not aware of the procedures of appeal against the matter originating from primary court. For him the applicant was negligent as it has never been a good cause to grant time. He went on saying the applicant has to account for 70 days.

Counsel Mwita further averred that what has been done by the applicant is to frustrate the respondent who is about to execute the decree. He prays this court to read **Seleman Seif vs Hafidh Said**, Misc Civil Appl

No. 33 of 2018 where (DSM Registry) explained four conditions to be considered in application of this nature. That is; the applicant has to account each day, the delay should not be inordinate, applicant has to show diligence and not apathy neither slopy and last the court has to see whether there is illegality. According to him, the applicant has not met the standard to move this court to extend time. He prayed the application to be found with less merit as it intended to block the execution process which is valid under the law.

While rejoining Mr. Ishabairu insisted that application was not filed on 29/01/2024 rather the application was filed on 28 /11/2023 and while filing, he followed the procedure as per law. He urges this court to read the annexure to the applicant affidavit where there is direction from *ecms*. He elaborated further that there was no negligent as applicant managed to account for days of delay from when he received the system report and is yearning to utilize her right to appeal. While subscribe to principles in **Seleman Seif vs Hafidh Said** (supra) it was counsel position that the issue in the application at hand is different. He reiterates his prayers in chief.

I have impassively considered and weighed the competing arguments from both parties. To begin with, I feel it is instructive to reiterate, as a

matter of general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court, but that discretion is judicial and so it must be exercised according to the rules of reasoning and justice.

It is trite that whenever any part seeks for extension of time to file an application or appeal out of time, he/she must advance the sufficient reason (s) that the court can consider in exercise its discretion. There is no decisive definition of what a sufficient/good cause is, however, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay and illegality as submitted by Mr. Mwita. See **Seleman Seif vs Hafidh Said** (supra), **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, **Lyamuya Construction vs Board of Registered Trustee of Young Women Christ Association of Tanzania**, Civil Application No. 2 of 2010 and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar es Salaam (Unreported).

In the present application, the counsel for applicant registered only one reason for extension of time as captured at paragraph 4, 5 and 6 of his affidavit. He deponed that, he filed an appeal to District Court of Tarime

as per law but few days later he was instructed through the *ecms* to file his appeal to High Court. I had time to read affidavit with its annexure and find on 25/11/2023 he filed appeal at Tarime District court but on 28/11/2023. Applicant was instructed to file appeal in the High court. That was 28/11/2023. It was his submission that, when the appeal was rejected, he found himself out of time. He lost the day while waiting for the system and on the same day after when he was given remarks, he files this application on 28/11/2023. I find the submission and reason adduced manage to move this court to grant the prayer.

All being done, I hold that the applicant has sufficiently registered good reason to be granted what she prayed. I hereby grant 30 days from the date of this ruling for the applicant to lodge her appeal.

No order as to costs.

DATED at **MUSOMA** this 30th day of May, 2024.



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M. L. KOMBA
Judge