

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA SUB-REGISTRY)**

**AT ARUSHA**

**MISC CIVIL APPLICATION NO. 95 OF 2023**

*(Originating from Court of Appeal Civil Application No. 17.2/2019 High Court Misc Application No. 99/2018 Arusha District Registry Civil Case No. 4/2016)*

**FLYCATCHER SAFARIS LIMITED.....APPLICANT**

**VERSUS**

**GURUPREET SINGH BHACHU.....RESPONDENT**


**RULING**

**TIGANGA, J**

This is an application for extension of time filed by the applicant Flycatcher Safaris Limited seeking the two main orders namely: -

- i. To extend the time to enable the applicant to lodge the Notice of appeal,
- ii. To extend the time to enable the applicant to apply for leave to appeal,

The application was preferred under section 11(1) of the **Appellate Jurisdiction Act** [Cap.141 R.E 2019]. It was also supported by the affidavit filed by Mr. Harun Idi Msangi, an Advocate fully instructed to represent the applicant in this application. The applicant is applying to be allowed to file the notice of appeal to appeal against the decision of this Court, Mwenempazi J, which dismissed Misc. Civil Application No. 99 of 2018 dated 21 October 2019 which was seeking for extension of time.



The record shows that the decision was challenged by the applicant before the Court of Appeal of Tanzania by way of Revision in Civil Application No. 220/02 of 2020 which was struck out on 16th August 2023 by the Court, on the ground that the application was misconceived for filing revision in the alternative of appeal. Following that order of the Court of Appeal, on 22nd September 2023, the applicant filed the application at hand seeking the orders that I have mentioned above.

The application was opposed by the respondent by filing the counter affidavit declared and filed by the respondent on the ground that the applicant failed to account for the delay of the period from 21st August 2019 up to 16th August 2023. He was of the view that pursuing the matter by way of revision before the Court of Appeal was a result of ignorance of the law and in law, ignorance is not the ground for extension of time and has never been an excuse.

At the hearing, parties were represented by the learned counsel. For the Applicant, was Mr. Harun Idi Msangi, Advocate while for the Respondent was Mr. Joseph Hirary, Advocate. Supporting the application, Mr. Msangi started by adopting the affidavit filed in support of the application. He said the application intends to ask the Court to extend the time so that the applicant can be allowed to file a Notice of Appeal against

the decision of this court Hon. Mwenempazi, J, dated 21<sup>st</sup> October 2019 in which the Court refused to extend the time for filing the appeal against the decision of the District Court of Arusha, in Civil Case No. 04/2016. Given the historical background, he said when the case was decided the applicant filed an application for revision in the Court of Appeal which was struck out on 16<sup>th</sup> August 2023 on the ground that the applicant was supposed to file an appeal. It was following that decision; that the applicant filed this application so that he could be allowed to lodge the Notice of Appeal to challenge the decision of the High Court referred to above.

According to him, for the whole period from when the revision was filed up to when it was struck out, they were waiting to be heard before the Court of Appeal which is why they are asking for the order of this Court to file the Notice of Appeal. For that reason, he prayed for the Court to extend them time so that they could file the Notice of Appeal as a step to challenge the decision of this court.

In reply, Mr. Hilary, submitted in opposition to the application that, this court needs to resolve only one issue which is whether the applicant has given sufficient cause to warrant him extension of time. In his view, the applicant did not give any material to entitle him to extension of time

for the delay was caused by ignorance of the law. In his view, spending time in the corridor of the Court of Appeal erroneously while he was supposed to appeal instead of revision has no merit. In his further view, the applicant has not given any reason as to why he failed to file the Notice of Appeal.

According to him, in determining what constitutes good cause, the Court is guided by the following principles. **First**, that the Court should look at the length of the delay. **Secondly**, the reasons for the delay. **Thirdly**, the degree of prejudice if the application is granted. **Fourth**, whether it raises a point of law of public importance such as illegality in the decision.

These principles are in the case of **Lyamuya Construction Co. Ltd vs The Board of Registered Trustees of YWCA**, CAT Arusha Civil Application No. 02/2010, Massati, J.A.

He said this application was filed four years after the decision of this Court, Mwenempazi, J and there is no illegality in that decision. Therefore, this Court will not do justice if it will extend time.

He said the applicant acted in ignorance; therefore, he must be punished for his negligence. In support of that contention, he relied on the case of **Amada Batenga vs Francis Kataya**, Civil Reference No. 01

of 2006, where it was held that the applicant's delay in lodging a Notice of Appeal was due to his ignorance of the law and negligence, the argument that delay was caused by sickness cannot be accepted.

In his further view, in every case, there must be an end to every litigation, and since the applicant failed to account for each day of his delay, he should therefore not be granted an extension of time and the application be dismissed with costs.

In his rejoinder, Mr. Msangi reminded the Court that it has powers and is in a position to determine whether the applicant has counted all days delayed or not. He said, at first, they did not opt for appeal, but revision, therefore they could not file the Notice of Appeal and that for the whole period that they were in the Court of Appeal, the applicant should be excused

Insisting on the point of illegality, he submitted that, the Court dismissed the application on the ground that the applicant did not attach the memorandum of appeal. While in his view that was not a requirement. He insisted that the court extend the time so that he could file the Notice of Appeal.

Now having extensively put clear the facts and arguments of the application, it is the general principle in our jurisdiction as held in the case

of **Lyamuya Construction Co. Ltd vs The Board of Registered Trustees of YWCA**, CAT Arusha Civil Application No. 02/2010, that in as a matter of general principle, it is the discretion of the Court to grant an extension of time. But discretion is judicial, and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrarily. The authority gave four guidelines as the factors to consider in deciding the issue as to whether the applicant has furnished good cause.

- (a) The applicant must account for all periods 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 the action that he intends to take
- (d) If the court feels that there are sufficient reasons such as the existence of the point of law of sufficient importance such as the illegality of the decision sought to be challenged

It is also a principle that in accounting for all days of delay, the applicant must account for every single day delayed. While judging as to whether the delay is inordinate or not, the reasons for delay must be considered. Also, in the interest of justice, the court must consider the degree of

prejudice on the party opposing it if the application is granted. This principle was clearly stated in the **Mumello v Bank of Tanzania** [2006], E.A 227

*"...an application for extension of time is entirely in the discretion of the court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."*

In the matter at hand, the applicant has never been at rest, he has been in the court corridor for all these years, though on the wrong forum and by wrong procedures, but at least he has never slept on his right. It is clear that the applicant has been all this time being represented by the Advocate, and if faults, then, they have been being committed by the Advocate, not the applicant. In my view, it will be a manifestation of an injustice of the highest order if the courts decide to punish the parties for the faults committed by their advocates.

Further to that, looking at the argument by the applicant, particularly in the rejoinder submission, he alleges the existence of illegality in the decision, especially on the question as to fatality of the failure to attach the memorandum of appeal on the application for extension of time. It is also the principle that the ground of illegality alone suffices to warrant the application for an extension of time. In the case of

**TANESCO vs Mufungo Leonard Majura & 15 Others, Civil**

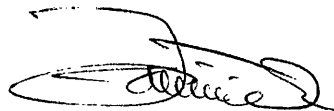
Application No. 94 of 2016, CAT, it was held *inter alia* that;

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose of ascertaining the point and if the illegality is established, to take appropriate measures to put the matter and record right."*

All these considered I find merit in the application, and allow it. Since the delay has not been in any way caused by the respondent, no order as to costs is made.

It is accordingly ordered

**DATED** and delivered at **ARUSHA** this 10th day of May 2024



**J.C. TIGANGA**

**JUDGE**