

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 572 OF 2023

*(Originates from Judgment and Decree dated 25th July, 2023 delivered
by Hon. Y.R. Ruboroga, PRM in Civil Case No. 34 of 2021)*

TSN SUPERMARKET LIMITED.....APPLICANT

VERSUS

THE BOARD OF TRUSTEES OF THE NATIONAL

SOCIAL SECURITY FUND.....RESPONDENT

RULING

16th & 21st Feb. 2024

KIREKIANO.; J.

This application is brought under section 14 (1) of the Law of Limitation Act Cap 89 [RE 2019] and section 95, order XLII Rule 2 of The Civil Procedure Code Cap 33 [RE 2019]. The applicant is seeking this court to enlarge time to allow the applicant to appeal against the decision of the District Court of Kinondoni dated 27th July 2023 in civil case no 34 of 2021. This application is supported by affidavits of Miss Bora Nicholas the applicant's counsel.

In substance the grounds advanced in the affidavit in the affidavit was delay in obtaining the requisite documents, that is; a copy of the

judgement and decree and judgement as well as steps taken to obtain legal service.

As gathered from the affidavits, the factual background of this application is that the applicant herein was sued under the summary procedure in the Resident Magistrate Court of Dar es Salaam at Kisutu. The claims involved the recovery of unpaid contributions of members to the respondent social security fund. Having obtained leave and defended the claims and after a full trial, the trial court adjudged the applicant to pay the respondent sum of Tshs 151,361 309 being members' contribution and penalties.

The judgment was delivered on 25th July 2023, and the applicants made several correspondences to obtain a copy of the judgment, till when the same was obtained on 21. 09.2023. Time was also running against the appellant while they sought legal services to challenge the decision.

This application is uncontested by the respondent who did not file a counter affidavit. Mr. Ngwembe for the respondent hinted that the respondent was not disputing the facts in the applicant's affidavit he reserved his right to submit on points of law.

During the hearing the applicant had service of Miss Bora Nicholaus learned advocate while the respondent had service of Mr. Geoffrey Ngwembe learned state attorney.

Miss Bora adopted the contest of the affidavit and supplementary and argued submitted that following the trial court decision on 25th July 2023 the applicant persistently made follow-ups to be availed with a copy of the decision. The first letter to the trial court was submitted on 26th July 2023. After several correspondences, the applicant was ultimately furnished with the documents on 21.09.2023.

From this stage, the applicants sought legal services in a bid to challenge the decision. Believing that he was out of time this application was thus filed on 11.10.2023.

In her submission, Miss Bora cited the decision in **Mumello vs Bank of Tanzania (Civil Appeal 12 of 2002) [2006] TZCA 12 (12 October 2006)** to the effect that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. As such given the decision in **Elifasi Nyatega and two others Vs Caspian Mining Ltd on page 11** Miss Bora was of the view that the applicant has demonstrated good cause.

Mr Ngwembe responded on matters of law. His submission was brief and focused thus; in computing the days of delay the applicant deserves automatic exclusion from a day from the date of judgment till when they

were supplied the same on 21/09/2023. This is given in section 19 (2) of the law of Limitation Act Cap 89.

In her rejoinder Miss Bora while taking note of Mr Ngwembe's submission, beseeched this court to consider that the applicant has demonstrated good cause for delay.

It is now established law and practice that the application for an extension of time court will consider granting the same if the applicant has demonstrated good cause for the delay. The application will not be allowed at the convenience or consensus of the parties. The rationale is among others, discouraging parties' delay in taking essential steps in expediting the administration of justice.

Such good cause shall depend on what the court judicially considers to be good cause having regard to the facts placed before the court. In the case of **Tanga Cement Company Ltd vs. Jumanne D. Masangwa and Amos. Mwalwanda, Civil Application No. 6 of 2001 [2004] TZCA 4, TANZLII** the Court of Appeal while dealing with an application for extension of time held that:

From the decided cases several factors have to be taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; and the lack of diligence on the part of the applicant.

In this application, the applicants' depositions pose two aspects which will determine this application. **Firstly**, the time spent in obtaining a copy of the decision, and **secondly**, the time spent in pursuing legal consultation.

It is common ground that the decision was delivered on 25.07.2023. and the applicant was supplied with a copy of the same on 21.09.2023. As rightly submitted by Mr. Ngwembe for the respondent the provision of section **19 (2) of the Law of Limitation** Act Cap 89 should be brought into play in Favor of the applicant, the same provides;

*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 requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.** (Emphasis supplied)*

It is also important to note that, while the days spent in obtaining the requisite documents may be excluded, the applicant had a duty to exercise diligence. This includes applying to the trial court to be supplied with the documents. This position was also stated by the court of appeal in **Mohamed Salmin vs Jumanne Omary Mapesa (Civil Appeal 345 of 2019) [2020] TZCA 1825 (22 October 2020)** thus:

There is also a duty to apply for a decree within the time prescribed for appeal. In the present

case, after the trial court decree was struck out by the Court, the duty to procure a corrected and proper decree was upon the appellant, and this duty was expected to be exercised within reasonable time while mindful of the time prescribed for appeals before the High court is ninety (90) days.

Considering that the applicant diligently applied for a copy of the decision on 26.07.2023. it means that this date to the date of supply of the documents on 21.09.2023 deserves to be excluded as I hereby do.

What this means is that being mindful that the time prescribed for appeals before the High Court is ninety (90) days having excluded the days from 26. 07.2023 till 21.09.2023. It means that from 21.09.2023 till when the applicant filed this application on 11.10.2023 that is to say (20 days) the applicant was still within time to appeal.

I have also considered that the 90 days to appeal are meant to facilitate the appellant aspiring to appeal to the high court against the decision of the District Court to make the necessary arrangements including obtaining legal service. When such arrangements are done within the period so deserving to the appellant in this case from 21.10.2023 till 11.10.2023 there can be no question of laxity suggesting inordinate delay.

I have also considered that from 11.10. 2023 till this date of ruling the ninety days have lapsed while the applicant has been in court and can

not be blamed for that. Given the foregoing, this application is granted, and the applicant is given 14 days from this date of ruling to lodge a memorandum of appeal to this court. Considering the application was not contested, there will be no order as to costs.


A.J. KIREKIANO

JUDGE

21.02.2024



COURT

Ruling delivered in chamber in the presence of Miss Bora Nicholaus advocate for the applicant and Mr. Geoffrey Ngwembe State Attorney for the respondent

Sgd

A.J. KIREKIANO

JUDGE

21.02.2024