



THE JUDICIARY OF TANZANIA
IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA
(CORAM: HON. AUGUSTINE RWIZILE)

MISCELLANEOUS CIVIL APPLICATION NO. 7 OF 2023

MOSHI KASIMU COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

DEUSI SAMSON RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

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Facts

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Ratio Decidendi

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21st of May 2024

Hon. RWIZILE.:

It is an application for extension of time. The applicant seeks to file an application for extension of time to set aside a dismissal order in Misc. Land Appeal No. 41 of 2021 which was dismissed on 27.2.2023 for non-appearance of the applicant.

The reasons for the delay are stated under paragraph 13 of the supplementary affidavit which states that;

1. The court did not issue clear seven days notice before commencement of the hearing, notifying the applicant that the matter will be conducted by remote hearing.
2. The applicant was not provided with the video conference link, password and instructions three hours before the commencement of the hearing.
3. That, the applicant was never notified withdrawal of his former Advocate representing him in appeal No. 41/2022 as required by law.



At the hearing, the applicant was under the services of Mr. Moses Rwegoshora, learned advocate while the respondent was served by Mr. Damas Sogomba, learned advocate.

In his submission, Mr. Rwegoshora for the applicant stated that the delay was caused by the applicant's advocate, Mr. Ndayanse who was involved in road accident and could not manage to file the application on time. He said, the dismissed case was heard by way of video conference when a notice of 7 days prior to the hearing was not given. He added, it is contrary to regulation 10 of the Judicature and Application of Laws (Remote Proceedings and Electronics Recording) Rules, 2021. GN No.637 of 2021. He also cited regulation 63(2) of The Advocates (Professional Conduct and Etiquette) Regulations, 2018, GN.118/2018 which deals with withdrawal of service by advocates. It is the requirement that in writing, the advocate should inform both the court and the client of his withdrawal. He added that the said requirement was not complied with. At the end, he prayed, this application be dismissed.

Responding to the submission of the applicant, Mr. Sogomba stated that regulation 63(2) of GN 118/2018 was complied with, but apart from the court, he was not sure if the client was served with a notice to withdraw from service by the advocate. He continued, this application be dismissed on the reason that it was filed after an elapse of 70 days which is out of time. According to him, the advocate who alleged to be sick, did not prove his sickness. To support this submission, he cited the case of **Bruno Nyalifa vs Minister Secretary Home affairs and the AG**, Civil Application No. 82 of 2017. He asked this court to dismiss this application.

In rejoinder, it was insisted that the delay was caused by an advocate, not his client. He insisted that the client should not be punished due to the mistakes committed by his advocate.

I have respectfully considered submissions by the counsel for the parties and the record. The sole issue calling for determination is whether the applicant has shown sufficient cause for delay.

The origin of this application is an appeal which was dismissed for non-appearance of the appellant on 27.2.2023. The law is clear on that, when an appeal is dismissed for non – appearance, the aggrieved party may within 30 days from when such an order was pronounced, file for setting aside the dismissal order. This is provided for under item 4, part III of the schedule to the Law of Limitation Act, [Cap. 89 R.E 2019].

In the present application, the appeal was dismissed on 27.2.2023, the applicant was required to file the application before 30.3.2023. But he did not comply. He then filed for extension of time on 6.6.2023. Till this application was filed, there was a gap of 69 days.

This application, like any other application for the extension of time, the applicant has to account for each day of delay as per the case of the **Attorney General vs Emmanuel Marangakisi** (As Attorney of Anastansious Anagnostou). (CAT), Civil Application No. 138 of 2019, on page 15 where it was held;

“It is trite law that, in an application for extension of time to do a certain act, the applicant is supposed to account for each day of delay.”



Sickness, there is no doubt, can be a sufficient cause for extension of time if proved, as per the case of **Tiluhuma Pima vs Malogoi Muhoyi, (CAT)**, Civil Application No. 413/08 of 2022, on page 7;

"...indeed, the law is settled that once sickness is established and proved as to justify the delay, it constitutes sufficient cause for extension of time"

In this application, Mr. Ndayanse said to have been involved in an accident there is only a sworn affidavit by him to prove the same. It was not supported by any medical report. I am of the opinion that an affidavit without a medical report does not support the fact that Mr. Ndayanse was indeed sick.

As to illegality and irregularities, the applicant said to have not been notified on conducting hearing by remote hearing. This contention also was not proved. The court orders are always given in writing specifying date and time of the next hearing. The applicant ought to prove that seven days clear notice was not given. This could be supported by the proceedings of the last adjournment of this court as a proof that GN. No. 118 of 2018 was not complied. Failure to do so, the issue of illegalities was not proved.

On the issue of withdrawal of the advocate for the appellant without notice given to the client, cannot always warrant extension of time. It was communication between the client and advocates. The mistakes of either of the party can be taken as negligence. Negligence is not sufficient to warrant extension of time, see the case of **Yusufu Same & Another Vs Hadija Yusufu, (CAT)**, Civil Appeal No. 1 of 2002 at page 8, it was stated;

"Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time."

In the application at hand, the advocate is said to have been involved in an accident and could not manage to write, this was not proved as I have shown before. In the circumstances, I do not find merit in this application. I accordingly dismiss it. No order as to the costs.

Dated at KIGOMA ZONE this 21st of May 2024.



AUGUSTINE RWIZILE
JUDGE OF THE HIGH COURT



