

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. CIVIL APPLICATION NO. 27685 OF 2023

ELIMI ELECTRICAL COMPANY LTD..... APPLICANT

VERSUS

BUGANDO MEDICAL CENTRE RESPONDENT

RULING

17/5/2024 & 31/5/2024

ROBERT, J:-

This is an application for extension of time to enable the applicant, Elemi Electrical Company Limited, to file an appeal against the decision of the District Court of Nyamagana in Civil Case No. 28 of 2022. The application is filed under section 14(1) of the Law of Limitation Act.

Parties in this application were represented by Mr. William Muyumbu, and Ms. Ikupa Ephraim, learned Counsel for the Applicant and Respondent respectively.

The impugned decision of the trial court was delivered on 28th April, 2023. The applicant filed an appeal, Civil Appeal No. 16 of 2023, against the respondent. However, on 14th September 2023, the appeal was

struck out for not being attached with a copy of the decree. The decree was not in the original court record at the time.

After the appeal was struck out, the applicant wrote a letter to the District Magistrate of Nyamagana requesting a copy of the decree (Annex EL3). On 20th November 2023, the applicant sent a reminder letter, which was received on the same day. The copy of the decree was provided to the applicant on 4th December 2023. Consequently, the applicant filed this application for an extension of time on 15th December 2023.

At the hearing of this application, counsel for the applicant, Mr. William Muyumbu submitted that the delay in filing the appeal was caused by the late issuance of the decree by the trial court. He argued that the applicant acted promptly by requesting the decree immediately after the appeal was struck out and following up diligently until the decree was obtained.

Mr. Muyumbu cited the case of Rimisho Bobosho Shine vs Kwirine Michael Shine, Civil Application No. 312 of 2021, where the Court of Appeal of Tanzania held that an applicant who has been diligent in pursuing their case has a good cause for an extension of time. He also referred to William Getari Kegege vs Equity Bank and Ultimate Auction Mart, Civil Application No. 24/08 of 2019, emphasizing that litigants should not suffer due to the mistakes of court officers. He argued that the trial

magistrate's delay in drawing the decree constituted such a mistake and prayed for the application to be allowed with costs.

Ms. Ikupa Ephraim, counsel for the Respondent, opposed the application, contending that the discretion to extend time must be exercised judiciously and only upon sufficient grounds being presented. She cited *Lyamuya Construction Company Limited vs Board of Registered Trustee of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010, which sets out the principles for granting an extension of time, including accounting for the period of delay and showing diligence.

Ms. Ephraim argued that the applicant failed to request the decree promptly after the judgment and took 12 days to apply for it after the appeal was struck out. She noted that the applicant has not accounted for 77 days of delay from the date of the trial court's judgment to the filing of this application. She referenced *Jubilee Insurance Company Limited vs Mohamed Sameer Khan*, Civil Application No. 439/01 of 2020, which emphasized that negligence of an advocate does not constitute sufficient cause for an extension of time. She submitted that the delay was due to the applicant's negligence and not a technical reason. Therefore, she prayed for the application to be dismissed with costs.

Section 14(1) of the Law of Limitation Act provides the court with discretion to extend the period of limitation for the institution of an appeal upon reasonable or sufficient cause being shown. The key issue for determination is whether the applicant has provided sufficient cause to warrant the extension of time.

From the submissions, it is evident that the applicant acted after the appeal was struck out on 14th September 2023. The applicant requested a copy of the decree on 26th September 2023 and received it on 4th December 2023, filing this application on 15th December 2023. The delay between the judgment (28th April 2023) and the request for the decree, and between the decree's receipt and the filing of this application, must be sufficiently explained.

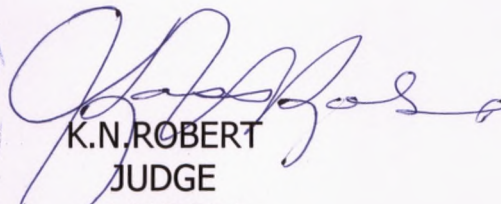
The applicant's delay of 77 days must be justified. The period between the judgment and the appeal's striking out is substantial. Although the applicant pursued the decree diligently post the appeal's striking out, the initial delay was not sufficiently accounted for.

Considering the principles established in *Lyamuya Construction* and *Jubilee Insurance*, the applicant has not satisfactorily accounted for the entire delay period. The Court of Appeal emphasizes diligence and the need to account for each day of delay.

Given the failure to account for the period of delay adequately and considering the established legal principles, this Court finds that the applicant has not shown sufficient cause to warrant the extension of time sought.

The application for extension of time is hereby dismissed with costs.




K.N. ROBERT
JUDGE
31/5/2024

