

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION NO. 3331 /2024
CASE REF 202402211000003331**

(Arising from PC. Civil Appeal No. 16 of 2022, High Court of Tanzania, at Dares Salaam,
Mkwabi J. dated 04 April 2023)

ADELTUS ANTHONY..... APPLICANT
VERSUS
FESTO B. MUZEERESPONDENT

RULING:

10 May & 13 June 2024.

KIREKIANO; J.

This application has been preferred under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 RE 2019], supported by an affidavit deponed by the applicant Adeltus Anthony. The applicant seeks the following orders;

- 1. That this Court be pleased to enlarge the time for the applicant to apply for a certificate that there is a point of law involved in this Court's decision in Pc. Civil Appeal No. 16 of 2022.*
- 2. Any other or further orders as this Court may deem fit.*

The factual background of this application, as can be gathered from the affidavit, is that the respondent sued the applicant in the Primary Court of Temeke at Temeke in Civil case no. 102 of 2020. Dissatisfied, the applicant appealed to the District Court of Temeke, civil appeal no 4 of 2022. The District Court dismissed the appeal for being time-barred. Subsequently, he appealed to the High Court in civil appeal no 16 of 2022. Again, his appeal to this court suffered the same limitation problem; the same was struck out (sic) on 3.4.2023. Dissatisfied, the applicant filed this application seeking the orders indicated above.

The grounds for delay advanced by the applicant are indicated in paragraphs 5, 7, and 8 of his affidavits; that is to say, the applicant was taking care of his sick relative, who eventually passed away. Following the sickness and death of his relative, he suffered financial constraints that precluded him from obtaining the service of an advocate in time. He also deponed facts stating illegality, seeking to argue an appeal on the respondent locus stand and the correct filing date between submitting documents and paying court fees.

When the application came before me for hearing, the applicant had the service of Mr. Jethro Turyamwesiga, a learned advocate; on his part, the

respondent enjoyed the service of Mr. Adam Kasegenya, a learned advocate. The application was heard by written submissions.

Mr. Turyamwesiga, in his submission in support of the application, urged this court to grant the prayer after considering the following grounds. He referred to Section 60 (1)(e) (f) and 60(2) of the Interpretations of Laws Act, Cap 1 R.E. 2019, to exclude Saturday, Sunday, or public holidays.

The applicant's counsel submitted that when the ruling was issued on 3rd April 2023, one of the applicant's close brothers, Phalamoni Muganyizi, had been sick for a long time and needed close care from the applicant as there were no other persons who could care for him. He urged this court to grant the application, submitting that the applicant's care of his brother from 3rd April 2023 until his death and financial difficulty until the applicant instructed him were good causes.

As such, the period from 5th up to 16th February 2024, when he was instructed by the applicant to prepare the documents, should be accounted as time spent in preparation of the applicant's document; he cited the case **of Damari Watson Bijinja v Innocent Sangano, Civil Application no. 30 of 2021**, whereby Manyanda J. Has this to say;

"In the instant application, though the applicant had all the documents as argued by the counsel for the respondent, he still needed time to prepare and file the application in Court. I find that the circumstances of this matter, the period of 12 days, were reasonable for the applicant to prepare the application.

On the issue of points of law that need this court to certify to the Court of Appeal, he submitted two points of law: (a) whether the respondent had locus stand to sue the applicant, and (b) whether filing documents in Court is when court fee is paid or when a hard copy of the document is presented in the registry.

On his part, Mr. Kasengenyia submitted that the applicant knocked on the doors of this Court for an extension of time after more than 270 days since the ruling of the High Court and 240 days after filing a notice of appeal before the Court of Appeal. He submitted that any application seeking an extension of time is required to account for the delay of even a single day. He referred the cases of **Said Salim Bakhresa v Allt Ngume [1997] TLR 312, William Shija v Fortunatus Masha, [1993] TLR 203** and **Bushiri Hassan v Latifa Lukio Mashayo, Civil Application No. 03 of 2007 (unreported)**, in the latter case, the Court emphasised that;

"Delay, even a single day, has to be accounted for: otherwise, there would be no point in having rules prescribing period within specific steps have to be taken.

He submitted that this application is an afterthought following the respondent's application before the Court of Appeal in Civil Application no. 621/01/2024, challenging the validity of a notice of appeal filed by the applicant. According to him, the applicant is prolonging the parties' legal battle.

Mr. Kasegenya submitted that for a Court to grant an extension of time, the applicant must show a good cause to warrant the same. He referred to the cases of **Tanga Cement Company v Jumanne D. Masangwa and Another, Civil Application No. 6 of 2001, Praygod Mbaga v Government of Kenya Criminal Investigation Department and another, Civil reference no. 4 of 2019 CAT (unreported)**, that the applicant will be granted an extension of time upon demonstration sufficient cause of delay.

Opposing the reasons adduced by the applicant, he submitted that the reasons for the illness of the applicant's brother were wanting because the applicant got time to file a notice of appeal to the Court of Appeal on 3rd

May 2023 in time.

Regarding financial difficulty, he submitted that it has no merit as there is legal assistance for those who are not financially fit and who could assist in preparing the document; hence, allowing this would set a bad precedent.

In his rejoinder, Mr Turyamwesiga submitted that the Applicant acted promptly and with due diligence. It can be observed that after the High Court issued a Ruling on 03/04/2023 in PC Civil Appeal No. 16 of 2022 by Hon. Mkwabi J, the Applicant filed a Notice of Appeal on the same day of 03/04/2023 on time, as explained by the Respondent on paragraph 2 at page 4 of the Respondent's Written Submission.

On the point of illegality, he argued that if the application is not granted, the applicant will suffer irreparable loss and set a bad precedent.

On my part, I have reflected on the law on extension of time and considered what has been submitted by the parties. Refusing or granting this kind of application is the court's discretion; I have considered the decisions cited by the respondent that is **Said Salim Bakhresa v Allt Ngume [1997] TLR 312, William Shija v Fortunatus Masha, (1993)**

TLR 203, but also in **Benedict Mumelo v Bank of Tanzania, Civil Appeal No. 12 of 2002**, the spirit in this decision is that the exercise of discretion to grant or refuse the application has to be done judiciously and even a single day, has to be accounted for. In **Benedict Mumelo** (supra), the Court of Appeal of Tanzania at Dar es Salaam, at Pg. 6, held thus

"It is trite law 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."

This court will determine whether the applicant has advanced good cause or sufficient reasons to warrant granting an extension of time. I will start with the question of sickness. Several decisions uphold that sickness constitutes a good cause for an extension of time. See the case of **John Davis Kashekya v The Attorney General, Civil Application No. 1 of 2012 (CAT- Unreported)**; **what** remains in dispute is whether the reasons and evidence adduced are sufficient to prove the ground of sickness raised by the applicant.

According to the applicant, soon after the ruling, his brother got sick, so

he started taking care of him from March 2023 up to December 2023, when his brother died. The applicant also relied on the decision of the Court of Appeal of Tanzania at Dar es Salaam in Civil Application No. 487/17 of 2016 between **Hamis Macha Sancho Versus Joyce Bachubila (Unreported)**, which granted an application for an extension of time on the grounds of illness. This decision is distinguishable here because, in that application, the reason for the delay was the applicant's sickness, which was proven. However, in the present application, the applicant associates the illness of his relative with his delay.

As I have indicated above, sickness may be a good ground; the reasoning was not left open-ended just for a part who exercises discretion to do a kind thing to another person, forgetting what he had to do. I have also considered that the applicant managed to file a notice of appeal on time when he was nursing his relative; I see no reason why the application was not filed in time.

Given the above facts, I find that the reason for the sickness of a relative, the way it happened in this application, is not convincing to grant the application.

The second reason the applicant adduced is the financial constraints of his brother's sickness. He said that after his brother's death on December 20, 2023, he had no money to engage an advocate until late February 2024, when he filed this application. Mr. Kasegenya opposed this ground and said that he should have sought legal aid if he could not engage an advocate.

Generally, financial difficulties or poverty is not a good ground for an extension of time save for exceptional circumstances it may be a good cause, ***Costantino Victor John vs Muhimbili National Hospital (Civil Application No.214 of 2020) [2021] TZCA 77 (17 March 2021)*** Mwambegele J A, ***Citing Yusufu Same and Another v. Hadija Yusufu, Civil Appeal No. 1 2002 (unreported)***

*"As for the period from 29.11.1996, when the application for leave was dismissed by Bahati 1, up to 3.1.1997, when the application leading to this appeal was lodged, the explanation by the respondent is based mainly on her numerous shuttles between Dar es Salaam where the court records were and Moshi where her counsel was based, coupled with poverty. We are aware that financial constraints are not sufficient grounds for an extension of time. See **Zabitis Kawuka v, Abdui Karim (EACA) Civil Appeal No. 18 of 1937**. But in the circumstances of this*

case, where the respondent was a widow, depending on legal aid, her plea of financial constraint cannot be held to be insignificant."

In this application, the applicant did not seek any assistance from legal aid that would corroborate his deposition that poverty obstructed him from pursuing justice. I do not consider the applicant's circumstances in this application exceptional to uphold financial constraint as a good cause.

I am now left with the grounds of illegalities alleged by the applicant. It is now a settled position of law that an illegality can, by itself, constitute a good cause for an extension of time. There are numerous decisions on this, including **Subira Hussein and 14 others versus Dotto Yusufu @Mzuzu Civil Application No.328/11 of 2022 CAT, Tanzania Breweries Limited Vs. Herman Bildad Minja Civil Application No. 11/18 of 2019** but also **China Hunan Construction Engineering Group (E.A) Ltd vs Pendo Kasyamukula (Civil Application No. 12/09 of 2021).**

The principle is that not every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an extension of time. What this means is that illegality has to be claimed by an applicant in his affidavit; it has to be apparent on the face of the record

without the need for a long argument or process, and it has to be a point of law of sufficient importance.

I have revisited the applicant's affidavit in paragraphs 9 and 10. The same indicates points of law which the applicant wishes to argue in the court of appeal, that is whether the respondent had locus stand to sue the applicant and two whether filing documents in Court is when a court fee is paid or when a hard copy of the document is presented in the registry. These are matters which could be dealt with when certifying the point of law. The same does not exhibit an error of law on the face of record on the impugned decision.

All said and done, this application lacks sufficient merit to warrant this Court to grant an extension of time. The application is dismissed with costs.



A. J. KIREKIANO

JUDGE

13.06.2024

COURT

Ruling delivered in the chamber in the presence of the applicant and the respondent.



A. J. KIREKIANO

JUDGE

13.06.2024