

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

PC CIVIL APPEAL NO. 7467 OF 2024

*(Arising from Miscellaneous Civil Application No. 2382 /2024 of the District Court of Rorya, at
Rorya (T.J. Marwa, SRM)*

JOSEPH MANYAMAAPPELLANT

VERSUS

SYLVANUS TISSORO.....RESPONDENT

JUDGMENT OF THE COURT

20/05/2024 & 13/06/2024

Kafanabo, J.:

The Appellant herein preferred this appeal after being aggrieved by a decision of the District Court of Rorya, at Rorya (T.J. Marwa, SRM) dated 20th February 2024 in Miscellaneous Civil Application No. 2382 /2024.

The background of the matter is that the parties herein are involved in a contractual wrangle in respect of which the Appellant alleged that he borrowed TZS 200,000/= from the Respondent but the Respondent wants to be paid TZS 10,000,000/= which is extremely excessive. The Respondent, on his part, is of the firm view that the contractual value of their transaction was TZS 10,000,000/= and which the Appellant was not ready to pay.

The Appellant's reluctance to pay pushed the Respondent to institute a civil suit at the Nyaburongo Primary Court, and on 21/11/2019 the said court delivered an exparte judgment against the Applicant herein. Moreover, on 25/10/2023 the same Primary Court allowed the application for an

extension of time and granted the Appellant herein fourteen days within which to present his application for setting aside an ex parte judgment dated 21/11/2019. The application (Number 01 of 2023) was filed and heard but was dismissed on 13/12/2023 for want of merits.

The Applicant was aggrieved by the decision of the Primary Court of Nyaburongo but could not appeal on time to the District Court of Rorya. He then preferred an application for an extension of time within which to appeal out of time in the District Court of Rorya vide Miscellaneous Civil Application No. 2382/2024. The said application was also heard, but the same was dismissed for want of merits.

Being aggrieved by the decision of the District Court of Rorya the Appellant preferred an appeal to this court based on the following grounds:

- 1. That, the district court erred in law and fact to disregard the truth of the applicant that the judiciary electronic case management system was not in order at the time when the appeal was due which cause(sic) the appeal to be filed out of time.*
- 2. That the trial magistrate erred in law to dismissed(sic) my application which had merit.*
- 3. The trial magistrate failed to allow the application want(sic) both parties to be heard and both parties were appeared(sic) before the court on the sad (sic) day without determining the case in the interest of justice.*
- 4. That the decision of the trial magistrate cause(sic) miscarriage of justice against the appellant.*

5. *That the trial magistrate erred in law mislead(sic) this application which had(sic) applied as required while all procedures required in law were followed.*
6. *That, the trial magistrate erred in law when failed to grant the application as prayed by applicant in order (the right to be seen done) (sic).*
7. *That, the decision of the trial magistrate in his ruling caused the applicant to suffered(sic) irreparable loss which the defendant read(sic) to be paid (the hereof) (sic) 10,000,000/- without reasonable cause by using false presence(sic).*

When the appeal was called for hearing both parties appeared in person without legal representation. Both parties did not address the specific grounds of appeal as outlined in the memorandum of appeal. Each party made a general submission which was very brief and hinged on the first ground of appeal. The first ground of appeal is about challenges the Appellant faced in filing his appeal in the eCase Management System, which is a system administered by the judiciary of Tanzania for purposes of improving and transforming the administration of justice.

In support of the appeal, the Appellant submitted that he prepared his appeal against the decision of the Primary Court on time, but the court's eCase Management System was not stable and that is why he failed to lodge his appeal on time in the District Court. He submitted that the District Court did not accept his reasons for the delay.

The Respondent submitted that the Appellant applied to the District Court out of time and did not explain to the court that his failure to appeal

on time was because of the problems of the court's system. If he would have explained that, the court could have granted the application. He delayed in the Primary Court, he also delayed in the District Court. He did not provide any sufficient cause for the delay and he did not provide notice to the court for his delay. Therefore, the application was properly dismissed by the district court.

After hearing the parties' submissions, it is opportune for this court to determine the grounds of appeal in light of the submissions of the parties. This court will also consider the grounds of appeal generally, that is grounds one, two, three, four, five, and six will be considered together and ground seven will be considered separately. In the end, the major point for determination is whether the District Court erred in not extending the time for the Appellant to file his appeal.

Commencing with the relevant law, the law guiding the present application is the **Magistrates' Courts Act, Cap. 11 R.E. 2019**. Section 20(3)(4) of the said Act provides that:

"(3) Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought.

(4) Notwithstanding the provisions of subsection (3)-

(a) the district court may extend the time for filing an appeal either before or after such period has expired; "

It is therefore clear that the District Court may extend the time within which to appeal. However, the discretion of the court in extending time is not absolute. It is guided by legal principles which have been restated in a plethora of the Court of Appeal decisions.

One of the key and settled principle on the law of extension of time in our jurisdiction is that the Applicant must account for each day of the delay as held in the cases of the **Board of Trustees of the Free Pentecostal Church of Tanzania vs Asha Selemani Chambada and Another (Civil Application 63 of 2023) [2023] TZCA 147** (28 March 2023), **Sebastian Ndaula v. Grace Rwamafa, Civil Application No. 4 of 2014** (Unreported), **Lyamuya Construction Company Ltd v. the Board of Registered Trustee of Young Women’s Christian Association of Tanzania, Civil Application No. 02 of 2010 (Unreported)**, **Zuber Nassoro Mohd vs Mkurugenzi Mkuu Shirika La Bandari Zanzibar (Civil Application 93 of 2018) [2018] TZCA 337 (14 December 2018)** are relevant.

Reverting to the present appeal, especially grounds one, two, three, four, five, and six, it is clear that ground one of the Appeal is the most comprehensive and reiterates the contents of paragraph 3 of the Affidavit.

According to the affidavit supporting the application for an extension of time in the District Court, the facts averred in paragraphs 3 and 4 of the affidavit were relevant as regards reasons for the delay in preferring an appeal to the District Court. The Appellant deposed that he prepared the memorandum of appeal on time but could not manage to lodge the same in the eCase Management System (judiciary website) because the system was not stable and was being reconstructed. He further deposed that it was not his fault that he failed to appeal on time. The Respondent did not file a counter affidavit.

Moreover, it is important to analyze the timelines in this matter in order to be in a position to determine the Application on merits. The timelines are as follows:

- i. The ruling of the Primary Court was delivered on 13/12/2023.
- ii. It is not clear when the copies of proceedings were made available to the Appellant.
- iii. The Appellant was supposed to file his appeal within 30 days from the date of delivery of the judgment of the primary court.
- iv. The eCase Management System indicates that the application was filed on 08/02/2024 but the papers uploaded in the system indicate that the same was signed on 31st January 2024.
- v. The prescribed time within which to appeal lapsed on 13/01/2024.

Given the Appellant's reason for the delay which was not controverted by the Respondent, this court takes cognizance of the fact that in November and December 2023, and January 2024 the court was undergoing systemic technological transformation and that there was a transition from the old JSDS2 system to the new eCase Management System.

The learned Magistrate who determined the application for extension of time from which this appeal arises simply ruled that the Appellant failed to account for each day of the delay from 13/12/2023 to 08/02/2024 and he took into account the date on which the application was signed by the party (i.e. 31.01.2024) before being uploaded into the eCase Management System.

It is this court's view that the issue of eCase Management System was very easily brushed off by the District Court. The court should have considered that at the relevant time when the Appellant failed to lodge his appeal electronically, that is in December 2023 and January 2024 the Judiciary had just shifted from the old JSDS2 system to the new system which the members of the public, especially unrepresented litigants, were struggling to cope.

It is also noted from the record of the Court, as alluded earlier, that the Respondent did not file a counter affidavit to dispute the facts deposed by the Appellant herein when applying for the extension of time in the District Court. This means that the facts as averred in the affidavit went unopposed.

Analyzing the timelines, the time within which the appeal was supposed to be filed was 30 days which lapsed on 13/01/2024, and the appellant had failed to file his appeal because of the challenges of the eCase Management System. The Appellant managed to prepare his application for extension of time on 31/01/2024 when it was signed as indicated in the documents uploaded in the eCase Management System. The application was formally filed in the eCase Management System on 08/02/2024. However, this is the date when the application has been paid for and approved in the system, but the actual filing date is the date of submission of the document electronically.

Rule 21(1) of the **Judicature and Application of Laws (Electronic Filing) Rules, 2018** provides that:

A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected.

However, this court is unable to verify the date of submission of the document because the said function is neither a right nor a privilege of a judicial officer determining the Application or the appeal.

Moreover, in the computation of time for filing, the law allows the exclusion of time in respect of which the electronic filing system encounters operational challenges. Rule 24 of the **Judicature and Application of Laws (Electronic Filing) Rules, 2018** provides that:

24.-(1) The period during which the electronic filing system is not in operation, for any reason, shall be excluded from the computation of time for filing.

In this appeal, the Appellant challenges the decision of the District Court because it did not consider the reason for failure to file the appeal timely; and the reason was that the electronic filing system was malfunctioning. After reviewing a decision of the District Court subject matter of this appeal, it is clear that there is no analysis of the issue of failure or malfunctioning of the electronic filing system as a reason for the delay.

Moreover, it is not in dispute that in this matter not every day of the delay has been accounted for. Further, it is also trite law that illegality may also be a good cause for an extension of time, which is not the case in the present appeal. However, it is this court's view that the District Court ought

to find that the Appellant managed to demonstrate sufficient cause for his delay in filing the appeal for the following reasons:

1. The Appellant made it clear that he failed to file his appeal on time because of the challenges posed by the new eCase Management System introduced in the judiciary.
2. The Respondent did not file a counter affidavit to dispute the Applicant's reasons for the delay as explained in the affidavit in support of the application for extension of time.
3. The technological transformation in respect of which the judiciary has embarked is a matter of public interest, and unavoidably, there are transitional challenges to both judicial officers and litigants in general which should be accommodated by the courts to ensure that litigants are not left out in the cold.
4. It follows that technological transformation should be used to facilitate the dispensation of justice and not a hurdle towards attaining the same.

Under the circumstances, it is in the interest of justice that the Appellant be given a benefit of doubt so that he can file his appeal.

In so holding, this court finds comfort in the observation of the Single Justice of the Court of Appeal in the case of **Laurent Simon Assenga v. Joseph Magoso & Others, Civil Application 50 of 2016**, (unreported) where his Lordship, when determining an application for extension of time, observed that:

"In determining an application under Rule 10, the issue that has to be resolved is always, whether, the applicant has shown good cause for extension of time. What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case.

Since grounds one, two, three, four, five, and six dispose of the appeal, it is unnecessary to determine the remaining ground seven of the Appeal.

Therefore, in light of the foregoing, and under the circumstances of this case, the appeal is allowed, the decision of the District Court is quashed and set aside, and the Appellant is granted fifteen (15) days within which to file his appeal in the District Court if he so wishes. Each party shall bear their costs.

It is so ordered.

Dated and Signed at Musoma this 13th day of June 2024.



K. I. Kafanabo
Judge

The Ruling has been delivered in the presence of the Appellant and the Respondent.

K. I. Kafanabo
Judge

13/06/2024