

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

MISC. CIVIL APPLICATION NO. 5639 OF 2024

(Originating from Civil Appeal No. 6/2023, the decision of the District Court of Kilwa at
Kilwa Masoko)

MARISIANA JOHN MWAIKWENDA APPLICANT

VERSUS

JUMA SWALEHE FUMO RESPONDENT

RULING

20th May & 20th June, 2024

DING'OHI, J;

This is an application for an extension of time within which to file an appeal out of time against the decision of the District Court of Kilwa district at Kilwa. The application is preferred under section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019, and any other enabling provisions of laws. It is supported by the applicant's affidavit disclosing the reasons for the delay in filing her appeal.

In the supporting affidavit accompanied by annexures, the applicant has deponed one ground for consideration by this court to grant an extension

of time. According to the applicant, the delay was caused by the challenges found in the online system of the judiciary (the system). The applicant contended that she had filed her appeal on 10th January 2024, but it was rejected for the reason that it did not comply with the template found in the system. Thereafter, she had been trying to file her appeal with no success until the time left her, hence this application.

In his counter-affidavit, the respondent vehemently opposed the application. He averred that there is no sufficient ground for the grant of an extension of time as the delay was caused by the applicant's negligence. The respondent averred further that the applicant has not attached the copy that she named as the copy of the form from the judiciary to prove that she filed her appeal on time. Either she has not mentioned dates in her affidavit that she tried to file her appeal, how long the online filing system was not working, and when it resumed.

This application was scheduled for a hearing on 16/04/2024, where both the applicant and respondent appeared in person without any legal representation. Parties agreed that this application be disposed of by way of written submission as per the schedule set by the court. I appreciate the positive efforts by the parties in complying with the court order.

In support of the application, the applicant prayed this court to adopt paragraph 6 of her affidavit and accept that the online filing system is a challenging mode in our jurisdiction. She relied on the well-established principle of the law that the rules of procedures are handmade of justice and should facilitate rather than impede decisions on substantive issues as reflected under Article 107A (2) (e) of the Constitution of the United Republic of Tanzania.

The applicant submitted further that according to section 14 of the Law of Limitations Act, it is the discretion of the court to extend the time when the applicant has established a sufficient cause for the delay. She was of the view that she managed to establish sufficient cause taking into account what she deposed in her affidavit in support of her application. She emphasized that there was no negligence on her part. To cement her argument, she referred this court to the cases of **Nzega Town Council v. Dickson Mutabuzi Mambo (Harshok Tree Hotel)** Misc Application No. 04 of 2023 High Court of Tanzania at Tabora and **The Director of General LAMP Pension Fund v. Paschal Ngalo** where the technical delay was considered as a sufficient ground for grant of an extension of time. The applicant insisted that the delay was caused by web technical issues which amount to technical

delay since her appeal was rejected by the judiciary statical dashboard system.

In response, the respondent contended that the reasons for the delay established by the applicant are not resounding because the date she said she filed the appeal was the last day to do so. The respondent argued that the applicant had not mentioned any date in her affidavit or submission when the system was not working and when it resumed. In that sense, the respondent is of the view that the applicant was duty-bound to prove her allegations, but she failed. To cement his position the respondent referred this court to the case of **Abdul Karim Haji v. Raymond Nchimbi Alois and Joseph Sita Joseph** (2006) TLR 419, where it was held that who alleges is the one responsible to prove.

The respondent submitted further that the applicant has not established a sufficient reason or good cause for the delay which would amount to her application being granted. The respondent referred this court to the decision of **Regional Manager Tanroads Kagera** where the court of appeal established a test to determine whether the applicant in the application for the extension of time has established sufficient cause or good cause.

The respondent submitted further that the issue of mentioning dates of delay is very crucial to enable the court and respondent to know the exact dates when the system shut down and when it resumed to account for each day of delay. He argued that a delay of two days is still a delay and the applicant must show cause for such delay as it was held in the case of **Tanzania Fertilizer Company Limited v Ruvuma Exports Company T and Another** Civil Application No 45 of 2000. The respondent argued that the applicant is to blame herself for negligence.

The Applicant had nothing to rejoin.

I have carefully considered the rival submissions of the parties. The main issue for determination is whether the applicant has advanced sufficient reason for this court to grant an extension of time for her to file an appeal out of time.

It is settled law that, the grant of an application for an extension of time is entirely at the discretion of the court. However, discretion has to be exercised judiciously upon sufficient cause being shown. See the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam (Unreported). Through case laws, there are various factors established that may be taken into account for establishing sufficient

cause. Those factors include the length of delay involved, reasons for the delay, the degree of prejudice, if any, that each party is likely to suffer, the diligence of a party, the conduct of the parties, and the need to balance the interests of a party who has a decision in his favor against the interests of a party who has a constitutionally underpinned right of appeal. See the case of **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam and **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam (Both unreported).

In the instant application, the applicant's main ground for the delay hinges on the technical delay due to the challenges found in the online system of the Judiciary. There is no dispute that the impugned judgment (Annexure MK-2) was delivered on 12/12/2023 whereas the applicant stated that she filed her appeal on 10th January 2024, one day before the expiry of the period to file an appeal as rightly submitted by the respondent. The applicant stated further that her appeal was rejected for the reason that it didn't comply with the template found in the system. The document annexed by the applicant to prove she filed her appeal on time (Annexure MK-3) was extracted on 2nd March 2024 at 4:55 PM, not 10th January 2024. Therefore,

I will agree with the respondent that the applicant has failed to prove her assertion. Furthermore, the applicant stated that after her appeal was rejected she tried to refile with no success due to network issues but she has not attached anything along with her affidavit to prove that she encountered difficulties in filing her appeal online for all 53 days she delayed taking into account the date she filled this application on 5th March 2024.

Rule 24 of the Judicature and Application of Laws (Electronic Filing) Rules G.N No. 148 of 2018 outlines what steps should be taken in case of technical problems during the filing process. Sub-rule 5 states that where a party encounters a technical problem, he shall informally and ex parte notify the registrar by 15:00 hrs of the following working day for appropriate relief. Sub-rule 6 states that if the Registrar is satisfied that there was a good cause for missing the deadline, the request under Sub-rule 5 shall be granted in writing.

From the above provision of law, I expected the applicant to notify the Registrar that she faced a technical problem, but there is no evidence showing that the applicant did so. Therefore, in a proper case, the applicant could not rely on the technical delay for the success of the kind of application.

However, taking into account that the applicant is a layperson and had no legal representation, I find that it would not be easy for her to know the procedures to be followed in case of technical difficulties when using the system. In the interest of justice and in order not to deprive the applicant of constitutional rights, I think the respondent will not be prejudiced if this application is granted.

The application is therefore granted. The applicant is given 21 days within which to file her intended appeal. There will be no order as to cost.



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S.R. DING'OH I

JUDGE

20/6/2024

COURT: Ruling delivered this 20th day of June 2024 in the presence of parties in person.



A handwritten signature in blue ink, appearing to be "S.R. DING'OH I".

S. R. DING'OH I

JUDGE

20/06/2024