

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO. 66 OF 2023

(Originating from the Matrimonial Cause No. 44 of 2022 at the District Court of
Temeke at One Stop Centre-Temeke)

ACME FERDINAND MUTABILWA..... APPLICANT

VERSUS

BELYEAN BENJAMIN BYENO..... RESPONDENT

RULING

05th February & 29th February, 2024

BARTHY, J.

The applicant herein through chamber summons supported by affidavit, moved this court to enlarge time for the applicant to file an appeal out of time, cost be provided for and any other relief deems fit and just to be granted by the court.

This application was found under section 14(1) of the Law of Limitation Act, Cap 89, R.E. 2002 (the Law of Limitation Act), and section 95 of the Civil Procedure Code, Cap 33, R.E 2002 and supported by the affidavit of Robert Patrice Chuwa.



At the hearing of this matter, the applicant was represented by learned advocate Winston Mosha, while the respondent was represented by Phabian Sefi, holding brief for advocate Nickson Ludovick. It was noted that the respondent did not contest the application.

The court is now tasked with determining whether the appellant has advanced good cause warranting the granting of the application.

In consideration of the application to enlarge time, the court regarded facts deposed on paragraph 3 of the affidavit in support of the application stating that the ruling was delivered on 17th July, 2023 and its copy was attached to it. The applicant stated that, he applied for the copy of judgment and decree to allow him to appeal. The copy of the said letters was attached as the annexure.

On paragraph 5 of the said affidavit, it was deposed that, the copies were issued by court to the applicant on 28th October, 2023. Therefore, claiming that the delay was not due to negligence, but rather it was caused by the court.

In the counter affidavit, the respondents counsel on paragraph 3 conceded all the grounds to support the application.

Having gone through the pleadings, in evaluating the application, the court considered the provisions of Section 14(1) of the Law of Limitation



Act, which allows for an extension of time for the institution of an appeal for any reasonable or sufficient cause.

*Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.*

[Emphasis is supplied].

This court in exercising its discretion, it also considered relevant case law, including the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal held that, what constitute good cause will depend with the circumstances of each case.

As in the case of the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), which provide guidance on what constitutes good cause to be as follow;

(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there's other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

There is a plethora of case authority insisting on conditions set are to be fulfilled; for the court to use its discretion. In the instant matter, the applicant mainly stated that he was unable to obtain a timely copy of decree and proceeding, resulting in it being time-barred to lodge her appeal directly. Hence she prayed for an extension of time.

Upon looking on the affidavit in support of the application, it states that the impugned judgment was delivered on 17/07/2023, and the copy of the decree was obtained on 28/10/2023. The affidavit in support of the application had attached copies of the applicant's letters dated 16/8/2023 and 12/9/2023, with the seal and endorsement of the court proving that the applicant had requested for the ruling and proceeding from the trial court with the letter.



However, the annexures attached to the affidavit show that the decree was issued on 21/07/2023, about 4 days after the judgment was pronounced. Also, the application was lodged on 5th October 2023, whereas the applicant claimed he was supplied with the copy of the decree on 28th October 2023, which was attached to the affidavit in support of the chamber summons.

In actuality, the dates do not tally, and it is impossible to be issued with the copy of the decree later on and be able to attach it to the application filed earlier. The court, therefore, finds that this could be a slip of the pen. As there is evidence of the letter attached, showing that until 18th of September 2023, the applicant had still requested the copy of the decree from the court.

Upon consideration of the pleadings and evidence presented, the court finds that the applicant has been able to account for the period of delay and has shown diligence in pursuing the appeal. The applicant's inability to obtain a timely copy of the judgment and decree constitutes good cause for the extension of time.

While there were discrepancies in the dates provided, the court acknowledges that the appellant promptly pursued the necessary documents from the court and took timely action upon receipt of the



decree. The court finds that the delay was not inordinate and that the applicant acted with due diligence.

Accordingly, the court exercises its discretion to grant the applicant an extension of 21 days to lodge the appeal from the date of this ruling. No order as to costs is made due to the nature of the relationship between the parties.

It is so ordered.

Dated at Dar es salaam this 29th of February, 2024.




G. N. BARTHY
JUDGE

Delivered in the presence of Ms. Diana Sing'ombe the learned counsel for the applicant, also holding brief of Mr. Nickson Ludovick learned advocate for the respondent and court clerk Bernadina Tayari.