

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 126 OF 2023

*(Arising from the decision of the High Court in Miscellaneous Criminal Application
No.215 of 2019)*

ASTRIDA GEORGE MWAKAPILAAPPLICANT

VERSUS

MAULID OMARY RESPONDENT

RULING

6th December 2023 & 27th February, 2024

MWANGA, J.

The ruling is concerning the application for an extension of time for the applicant to file a notice of appeal against the decision of this court in Miscellaneous Criminal Application No. 215 of 2019 delivered on 10th February, 2021 by De-Mello, J. In the impugned ruling, the court found out that the application was *res judicata* and accordingly dismissed it.

The applicant was aggrieved by the decision. However, the applicant was caught out of time. She then filed a Miscellaneous Criminal Application

No. 67 of 2021 for an extension of time to file a review against the ruling of De. Mello, J. and the same was granted in May, 2022.

As a result of that, on 9th June, 2022 the applicant filed Miscellaneous Criminal Application No. 71 of 2022 which was dismissed on 5th December, 2022 for want of prosecution. According to her, on 13th December, 2022, she then filed Miscellaneous Criminal Application No. 183 of 2022 which was also struck out for want of enabling provision on 24th April, 2023. It follows that she filed again Miscellaneous Criminal Application No. 69 of 2023 which she later withdrew on 28th July, 2023 on the ground that she was supposed to file an appeal to the court of appeal and not review.

Lastly, on 13th September, 2023, she filed the present application seeking an extension of time to file and lodge notice of appeal to the court of appeal out of time to appeal against the decision of De-Mello J, delivered on 10th February, 2021.

Per contra, in his counter affidavit, the respondent put the applicant to strict proof. He averred that the applicant has not demonstrated a good cause to warrant extension time. According to him, the applicant had no intention to appeal against the decision since the Miscellaneous Criminal

Application No. 215 of 2019 was delivered to date and did not take any steps or follow-up to file an appeal or extension of time.

When the matter was called for hearing on 25th October, 2023 both parties appeared in person and agreed on the application to be heard by way of written submission. The schedules were set respected and fully maintained by the parties. The applicant's submission supporting the application focused on two reasons. **One** is that she has counted each day of delay from when the ruling was issued on 10th February, 2021 to the date of filing this application. **Two**, the impugned ruling is tainted with illegality.

The respondent, on the other hand, countered the application on three points. **One** is that the applicant had failed to account for each day of delay since the present application was filed after two years and seven months. **Two**, the applicant's affidavit has not specified the illegalities in the ruling of 10th February, 2021. **Three**, the same application was granted to the applicant through Miscellaneous Criminal Application No. 67 of 2021. Hence, entertaining it twice is a multiplicity of suits and abusing the court process.

After going through the party's depositions and submissions, I must determine whether the applicant has demonstrated an excellent cause to warrant the exercise of the Court's discretion for an extension of time.

It is settled. That the **length of the delay, illegality,** and delay in being supplied with the necessary documents and timeliness of taking action constitute good cause for extension of time. See cases of **Moses Muchunguzi vs. Tanzania Cigarette Co. Ltd**, Civil Reference No. 3 of 2018 and **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, Civil Application No. 6 of 2001 (All unreported), to mention just a few. The rule for illegality to qualify as a ground for extension of time, the point of law must be apparent on the face of the record as opposed to the one that can only be discovered by the evidence adduced and exhibits thereto. This position was provided for by the Court of Appeal in the case of **Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010, Court of Appeal of Tanzania (unreported).

Upon careful reading of the affidavit of the applicant filed in this court and the chamber summons, I have not seen any specified illegality of the

decision in Miscellaneous Criminal Application No. 215 of 2019. Therefore, this ground does not exist in the eyes of the law.

Another ground for the extension of time raised by the applicant is that she has counted each day's pod delay. The law is also settled. For this ground to exist the applicant must account for each day of delay. See the case **of Omari Ally Mnyamilege administrator of the estate of the late Selemeni Ally Nyamilege & 2Others Vs Mwanza Engineering Works**, Civil Application No. 94/08/2017 (Unreported).

From the records, in the first attempt to challenge the decision of this court, the applicant applied for an extension of time to file a revision in Miscellaneous Criminal Application No. 67 of 2021, which was granted on 27th May, 2022 and within time, the same was to be filed within 14 days. As a result, on 9th June, 2022 the applicant filed Miscellaneous Criminal Application No. 71 of 2022 which was dismissed on 5th December, 2022 for want of prosecution. Eight days later, that is on 13th December, 2022, she filed Miscellaneous Criminal Application No. 183 of 2022 which was also struck out for want of enabling provision on 24th April, 2023. Again, she filed Miscellaneous Criminal Application No. 69 Of 2023 which she withdrew later on 28th July, 2023 on the ground that she was supposed to file an

appeal to the court of appeal and not review. Lastly, on 13th September, 2023, she filed the present application seeking an extension of time to file and lodge notice of appeal to the court of appeal out of time to appeal against the decision of De-Mello J, delivered on 10th February, 2021.

My take here is that, much as it can be understood that, the applicant had demonstrated a high degree of incompetence in handling her application which has taken almost two years and seven months, she has also not accounted for each day of delay as the law requires. From 28th July, 2023 to the date of filing this application ie. 13th September, 2023 is almost a month and a half. And the applicant has said what went wrong with such an unaccounted number of days, it cannot be said that she had fulfilled the legal requirements to justify the extension of time. See the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania(supra)**. In my further considered view is that the application ought to be brought promptly. See the case of **Tanga Cement Co. Ltd & Jumanne Vs Amos A. Mwalwanda**, Civil Appeal No. 6 of 2001(Unreported).

In the upshot, the application is liable to fail as I hereby hold. The application is, therefore, dismissed for lack of merits. Being criminal matter, Order accordingly.



H. R. Mwanga

JUDGE

27/02/2024