

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

MISC. APPLICATION NO. 115 OF 2023

*(Arising from the decision of Nyamagana District Court (Hon.Mpuya PRM) in Civil Appeal No. 64 of 2022
Originating from the decision of Urban Primary Court (J.B. Mugonya, RM) in Civil Case No. 373 of 2022)*

MSHOLO HABIBU SULEIMAN..... APPLICANT

VERSUS

UNICREDIT MICROFINANCE LTD.....RESPONDENT

RULING

19th & 21st February, 2024

ITEMBA, J.

The applicant hereinabove has applied before this court for an order of extension of time within which to file an appeal against the Judgment issued by the District Court of Nyamagana, in Civil Appeal No.64 of 2022. The application is supported by an affidavit deposed by Msholo Habibu Suleiman, the applicant himself. The respondent's counsel could not file his counter affidavit even after being granted with an extension of time to do the same.

When the application was scheduled for hearing, the applicant was present. Both parties were represented by learned counsels; Messr. Salim A. Fundikila and Mr. Eric Tumaini respectively.

In his submission in support of the application, the applicant's counsel explained that the grounds of application are found under paragraphs 5,7, and 9. He reiterated the facts in the affidavit that the applicant was sick, a situation which failed him into collecting the copy of judgment and file the intended appeal on time. That, apart from sickness, the applicant had low income therefore he had to find the legal aid from the Tanganyika Law Society (TLS). The applicant's counsel informed the court that the grounds of the intended appeal are found at paragraph 11 of the affidavit and mainly they are based on illegality by the District Court.

He relied on the cases of **Yusuph Same and another v Hadija Yusufu** Criminal no. 1/2022 CAT DSM which states that sickness is a sufficient cause for the court to grant extension of time, and that of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (all unreported), which provides for the principles for granting extension of time.

In reply, Mr. Tumaini opposed the application. He informed the court that he will submit only on matters of law. He briefly stated that extension of time under section 25(1)(b) of the Magistrates' Court's Act (MCA) is

issued on court's discretion upon proof of good cause or illegality. That, looking at the issues raised in the affidavit, the grounds of appeal do not show if there is any illegality. He relied on the same cited case of **Yusuph Same and another v Hadija Yusufu** (supra) in that, the court's discretion must be exercised judiciously. He urged the court to consider whether there is a sufficient cause established considering that there is a delay of 134 days. He moved the court to dismiss the application.

I have considered the application and I will now determine whether the applicant has sufficient reason for extension of time.

In assessing whether the application has merit, the law is settled that, a party seeking an order for extension of time has to adduce sufficient reason(s) which prevented him to act within time. See **Regional Manager Tanroads Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007 Court of Appeal. Also, a person applying for extension of time, despite giving sufficient reasons, must account for each day of delay. See **Omari R. Ibrahim v Ndege Commercial Services Ltd**, Civil Application No. 83/01 Of 2020.

In the present application, the law requires that a person aggrieved by the decision of the District Court to appeal before this court within 30

days after the date of the decision. The impugned judgement which is attached to the applicant's affidavit was issued on 23/3/2023. (see **Annexure MHS1**). Therefore, the applicant had up to 22nd of April to file his appeal. However, he filed this application on 8th of August 2023, which is about four months delay.

According to the applicant's affidavit, the delay is by 134 days and the main ground for delay is that, when the judgement was issued, he has been sick throughout, suffering from diabetes and he had to seek legal aid from the TLS. That, he was forced to move to Misenyi in Kagera where his wife is located, so that she can take care of him. That, in the process, he was admitted at Mugana hospital three times. That, for the first time he was admitted between 1st and 14th of April and after being discharged, he was advised to rest. That, on 23rd April he sought legal aid from the TLS and he was advised to wait until the TLS' AGM is over. He was admitted again for the second and third time between 10th and 16th of June and between 26th and 30th of June consecutively. He attached the hospital discharge forms as **annexure MHS 2, MHS 3 and MHS 5** respectively. The applicant explains further that, on 8th June he successful secured a letter of assistance and court representation from TLS under *pro bono*

basis through the learned counsel, Mr. Salim Fundikila and on 8/8/2023 he managed to file this application.

The reply by the respondent's counsel is that the applicant has not shown any illegality as the law requires, therefore, the court should use its discretion not to grant an extension.

As mentioned hereinabove, the reasons given by the applicant are that he was sick to the extent of being admitted in hospital for 3 times and when he recovered, he had to see for legal aid from the TLS. According to the evidence supplied, annexure MHS 5, shows that, the last time the applicant was discharged from the hospital was 30th June 2023. Between that date and 8th of August when he filed this application there are 39 days and within these days he moved back to Mwanza and he was undergoing dialysis treatment at Bugando hospital.

It has been held in a number of times that, sickness is a condition beyond human control and once proved, it suffices to warrant extension of time. See for example the cases of **Granitech (T) Company limited vs. Diamond Trust Bank Tanzania Ltd & 4 Others** (supra); **Alasai Josiah v. Lotus Valley Ltd**, Civil Appl. No. 498/12 of 2019; and Christina

Alphonse Thomas v Saamoja Masingija; Civil Appl. No. 1/2014 (both unreported).

I find that the applicant has properly accounted for the delay and he was not negligent in delaying to file his appeal. The health condition which the applicant was in, would not have allowed him to deal with court applications. After being discharged from the hospital for the last time, he had to undergo dialysis and then seek legal support, a process which quite accounts for the 39 days mentioned above.

To conclude, I find that this application has merit and I proceed to grant the extension of time as applied. The applicant has to file his appeal within 21 days from the date of this ruling. No orders as to costs.

It is so ordered.

DATED at MWANZA this 21st February, 2024.



**L. J. ITEMBA
JUDGE**

Ruling delivered under my hand and seal of the court, in the presence of Mr. Erick Tumaini learned counsel for the respondent also holding brief for Salim Fundikila learned counsel for the respondent and Ms. E. Michael, RMA.

A handwritten signature in blue ink, appearing to read 'L. J. Itemba', is positioned above the printed name and title.

L. J. ITEMBA
JUDGE