

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 95 OF 2023**

(Arising from PC Civil Appeal No. 85 of 2022)

**DUBAI ISACK MBWILO ..... APPLICANT**

**VERSUS**

**REVOCATUS MAGEZI.....RESPONDENT**

**RULING**

16/2/2024 & 29/2/2024

**ROBERT, J:-**

This application seeks an order for extension of time to file an application for certification on a point of law to enable the applicant, Dubai Isack Mbwilo, to file an appeal to the Court of Appeal of Tanzania against the decision of this Court in PC Civil Appeal No. 85 of 2022. The application is supported by the reasons stated in the affidavit sworn by the applicant.

The applicant having been aggrieved by the decision of this Court in PC Civil Appeal No. 85 of 2022 delivered on 1st June 2023, in favor of the respondent, Revocatus Magezi lodged a Notice of Appeal with the Court of

Appeal of Tanzania with the intention to challenge the decision thereof by way of appeal. However, as the law require appeals originating from Primary Court not to lie against the decision of the High Court in any proceedings unless the High Court certifies that a point of law is involved in the decision sought to be appealed. Therefore, the applicant was required to file an application for certification within the prescribed time.

The Applicant, appearing in person, relies on the contents of his affidavit in support of the application. He attributes the delay in filing the application for certification to his health condition, which necessitated medical attention from Nyamagana District Hospital, as evidenced by the medical report attached to his affidavit.

On the other hand, counsel for the respondent, represented by Agneta Anicet, argued that this application fails to meet the conditions set forth in the case of Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010. The attached medical report dated 14th July 2023, indicates that the applicant had been attending the hospital for medical consultations and treatment from 16th June 2023 until the date of the medical report. Additionally, the respondent contended that the health-

related reasons presented by the Applicant are merely an afterthought and should not be accepted by the Court.

In the cited case of *Lyamuya Construction*, the Court of Appeal outlined the following guidelines in exercising its discretion to grant an extension of time: The applicant must account for all the periods of delay; the delay should not be inordinate; the applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take; and the Court may grant an extension if there are other sufficient reasons, such as the existence of a point of law of sufficient importance or the illegality of the decision sought to be challenged.

Considering these guidelines, this Court observes that the applicant has accounted for the period of delay and has provided medical evidence to support his claim of health problems. The medical report indicates that the applicant sought medical attention immediately after filing the Notice of Appeal due to serious abdominal pains. While the respondent contests this as an afterthought, the medical report provides some corroboration to the applicant's claim.

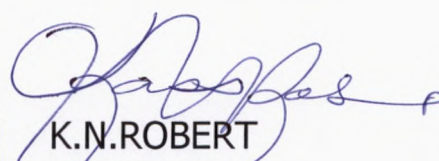
Furthermore, the delay, as explained by the applicant, is not inordinate, and the applicant has demonstrated diligence in seeking medical attention and subsequently filing this application upon realizing the need for an extension.

In light of the circumstances, the Court is inclined to exercise its discretion judiciously. The health issues presented by the applicant, coupled with the timely filing of this application upon realization of the need for an extension, provide sufficient grounds for granting the extension of time sought.

In conclusion, the Court grants the applicant an extension of time to file the application for certification on a point of law. The applicant is directed to file the said application within 14 days from the date of this ruling. Each party shall bear its own costs.

It is so ordered.



  
K.N.ROBERT  
JUDGE  
29/2/2024