

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 936 OF 2016**

PASTORY HENRY KABOYA (As an Administrator of Mwalami Seif Zigo).....APPLICANT

VERSUS

EVARIST SHIYO.....RESPONDENT

RULING

Date of Last order: 04/12/2017

Date of Ruling: 02/02/2018

S.A.N WAMBURA, J.

The applicant **Pastory Henry Kaboya** made this application under Section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2002 praying for the following orders;

- (i) That this honourable Court be pleased to grant the applicant extension of time to file appeal out of time.*
- (ii) That costs be provided.*

The applicant appeared in person unrepresented whereas the respondent had the services of Mr. Mtui Advocate.

On 22/06/2017 this court ordered the matter to proceed by way of written submissions. Both parties filed their written submissions as scheduled. I thank them for adhering to the schedule.

Having carefully considered the rival arguments of both parties, I have observed that the main issue to be determined by this court is whether the applicant establishes sufficient reasons for this court to exercise its discretionary power to extend time within which he can file an appeal out of time.

It is undisputed that his Court has discretionary powers to grant the said application where it is satisfied that sufficient or good cause has been adduced as was held in the case of **Micheal Lesseni Kweka Vs. John Eliyafye** (1997) TLR 152. If one fails to do the Court has no option but to refuse the application as was held in the case of **Innocent Kazila Vs Jelazi Omrefu**, Misc. Civil Application No. 13 of 2004(HC) (unreported).

The law requires this court to grant such applications where sufficient causes have been adduced. In the case of **Benedict Mumello Vs Bank of Tanzania** Civil Appeal No. 12/2002 the Court held inter alia that:-

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

The term sufficient cause has not been defined. However, in the case of **Yusuph Same and Hawa Dada Vs Hadija Yusuf** Civil Appeal No 1 of

2002, the Court of Appeal elaborated on the term of sufficient cause *"that it should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking necessary steps"*.

In the case of **Shanti Vs. Hindocha and Others (1973) EA 207** the then Court of Appeal for East Africa held that;

"The position of an applicant for extension of time is entirely different from that an application for leave to appeal. He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason he can show.....is that the delay has not been caused/contributed to by dilatory conduct on his part. But there may be other reasons and these are all matters of degree. He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case"

In the case of **John Ondolo Chacha Vs Dar Cool Makers Ltd** Civil Application No. 99 of 2014 (unreported) the Court of Appeal of Tanzania held that;

"....the undisputed facts are that the applicant obtained the necessary documents on 30th April, 2014, documents that could enable him to proceed further with other necessary steps I consider that to be a good cause for the said delay.

Date: 2/2/2018

Coram: S.A.N. Wambura, J

For Applicant: Present in person

For Respondent: Mr. Mtui Advocate

C/c: Mhagama

Mr. Mtui: matter is for ruling and we are ready.

Applicant: I am also ready.

Court

Ruling delivered this 2nd day of February 2018 at the presence of the applicant who appeared in person and Mr. Mtui for the respondent who is also present in person.

S.A.N WAMBURA

JUDGE

02/02/2018


Again in the case of **Tanzania Revenue Authority Vs Yusuph Juma Yusuph** Civil Application No. 02 of 2014 (Unreported), the Court of Appeal considered the delay of obtaining the copy of the decree as sufficient reason for granting an application for extension of time.

It is from the above authorities and reasons advanced in the applicant's affidavit I find that there are sufficient grounds for this court to grant the application sought.

In the upshot, I accordingly grant the application for extension of time to file an appeal out of time as prayed. Each party to bear its own costs.

The applicant to file the appeal within 14 days from the date of this ruling.

It is so ordered.


S.A.N WAMBURA
JUDGE
02/02/2018