

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISCELLANEOUS CIVIL APPLICATION NO. 36 OF 2020**  
*(Arising from the judgment of District Court of Musoma at Musoma  
in Civil Appeal No. 72 of 2019)*

**BAYPORT FINANCIAL SERVICES (T) LTD ..... APPLICANT**

**VERSUS**

**JANETH K. MKAMALA ..... RESPONDENT**

**RULING**

27<sup>th</sup> November and 22<sup>nd</sup> December, 2020

**KISANYA, J.:**

In this application made under section 25(1) (b) of the Magistrates Courts Act, Cap.11, R.E. 2019 (the MCA), this Court has been moved to grant an order for extension time within which to appeal against the judgment of the District Court of Musoma at Musoma in Civil Appeal No. 72 of 2019. The judgment subject to this application was delivered in favour of the respondent on 10.02.2020.

The applicant failed to appeal within 30 days prescribed by section 25 (1) of the MCA. The reasons for the said failure are reflected in the affidavit of Alice Nana, legal officer of the applicant which was appended to the Chamber Summons. The reasons deposed therein is sickness of the said Alice Anna. According to "Annex BFS -4" to the affidavit, Alice Anna was admitted at J.P.M Hospital due to dengue fever and typhoid fever on 08.02.2020 and discharged on 29.02.2020. It was deposed in paragraph 7 of the affidavit that, the said Alice Nana was advised by the doctors to resume her duties after fourteen days which ended on 10.03.2020. Finally, she reported to work on 16.03.2020. Since

the time within to appeal had lapsed, she filed an application for extension of time on 31.03.2020. The said application was struck out by this Court on 03.06.2020 as the affidavit thereto was defective. However, the Court granted her leave to file a competent application within thirty days. She therefore filed the present application on 01.07. 2020.

With leave of the Court, this matter was disposed by way of written submissions filed by Mr. Ostack Mligo, learned counsel for the applicant and Mr. Hamisi Masudi, learned advocate for the respondent.

Submitting on behalf of the applicant, Mr. Mligo argued that the applicant had advanced sufficient cause for extension of time. Citing the case of **Kapapa Kumpindi vs The Plant Manager Tanzania Breweries**, Civil Application No. 06 of 2010, CAT (unreported), Mr. Mligo argued that sickness constitutes a sufficient delay. Other cases cited by Mr. Mligo were **Mumello vs Bank of Tanzania** [2006] E.A 227, *Karitas Kigoma vs KG Dewsi Ltd* [2003] TLR 420 and **Fortunatus Masha vs William and Another** [1997] TLR 154. It was held in the above cited cases that, extension of time will be granted where the applicant has shown sufficient cause for the actual delay. For that reason, Mr. Mligo asked the Court to grant the application.

For the respondent, Mr. Masudi argued that the applicant had not proved as to whether Alice Nana was sick, admitted and discharged on 29.02.2020. His argument was based on the fact that the discharge form appended to affidavit is dated 18.03.2020 and not 29.02.2020 and that, relevant receipts for the services rendered to the said Alice Nana was not tendered in evidence. Therefore, Mr. Masudi moved the Court to dismiss the application on the account that the applicant had not advanced sufficient reason for the delay.

I have carefully considered the rival submissions made by the learned counsel for the parties together with the pleadings filed before this Court. The main issue is whether or not this application is meritorious.

As rightly argued by both counsel, extension of time is granted upon being satisfied that the delay was caused by a sufficient cause beyond the applicant's control. Therefore, in addressing the issue whether the application is meritorious, the Court is required to find out whether there was sufficient cause which prevented the applicant from appealing in time. Sufficient cause is established depending on the circumstances of each case. Factors to be considered on whether to grant or not to grant the extension of time include, the length of the delay; whether the applicant has account for all the period of delay and proved diligence and not apathy, negligence or sloppiness in prosecuting the appeal or other action. Other sufficient reason is existence of a point of law of such as, the illegality of the decision sought to be challenged. See **Damas Assey and Another vs Raymond Mgonda Paula**, Civil Application No. 32/17 of 2018, CAT at Dar es Salaam (unreported).

As stated herein, the judgment subject to this application was delivered on 10.02.2020. The reason for the delay is sickness of the applicant's sole legal officer from 08.02.2020 to 29.02.2020. She then resumed her duties on 16.03.2020 and filed the application for extension of 31.03.2020. I agree with Mr. Mligo that sickness is a sufficient cause which can prevent a person from performing his or her normal duties. This fact was proved by the Doctors Details and Treatment Information (Exhibit BFS-4) appended to the affidavit. Unless there is other evidence to prove that the said document is not genuine, this Court cannot disregard it only because it was signed on 18.03.2020. Such argument can be considered if it established and proved the said document is signed on the date of discharge of a patient and not otherwise. No


evidence was tendered to prove that fact. Now, having considered further that the appeal before the District Court was prosecuted by the said Alice Nana, I find that the applicant has accounted for the delay from 11.03.2020 to 16.03.2020.

It is in evidence that the application for extension of time was then filed 15 days later on 31.03.2020. I find that the applicant was prompt to take the necessary action against the judgment of the District Court when Alice Nana resumed her duties. As to the period from 31.03.2020 to 01.07.2020, the same was noted by this Court when granted the applicant leave to file a competent applicant within 30 days. Therefore, it was a technical not actual delay.


In the upshot, the Court is satisfied that there is sufficient reason for extension of time within which to appeal against the judgment of the District Court of Musoma. Accordingly, this application is allowed. It is ordered that the intended appeal be filed within thirty (30) days from the date of this ruling. Costs to follow the event. Order accordingly.

DATED at MUSOMA this 22<sup>nd</sup> day of December, 2020.



  
E. S. Kisanya  
JUDGE

Court: Ruling delivered this 22<sup>nd</sup> December, 2020 in the absence of the applicant and in the presence of the respondent in person. B/C Mr. Maiga-SRMA present.

  
E. S. Kisanya  
JUDGE  
22/12/2020