

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE COMMERCIAL DIVISION
AT DAR ES SALAAM

COMMERCIAL APPLICATION NO. 129 OF 2023

(Arising from Commercial Case No. 18 of 2017)

MWANANCHI INSURANCE COMPANY LIMITED APPLICANT

VERSUS

TANZANIA INSURANCE REGULATORY AUTHORITY..... 1ST RESPONDENT

THE ATTORNEY GENERAL..... 2ND RESPONDENT

RULING

February 9th, 2024 & March 15th, 2024

Morris, J

Time to process the appeal to the Court of Appeal has run against the applicant above. Through this application, he is moving the Court to determine his application for extension of time for him to file a notice of appeal. He has two affidavits in support of the application. They were sworn by Ephraem Christopher Mrema and Ndurumah Keya Majembe respectively. The respondent, however, contests the application vide the counter affidavit of Okoka Jairo Mgavilenzi. As the record stands, the affidavit of Ndurumah Keya Majembe was not specifically contradicted. The deponent in the



counter affidavit merely states that such affidavit "has nothing to do with the Respondents case".

Briefly accounted, the history of this matter started with the filing of Commercial Case No. 18 in 2017 by the applicant. He lost. He appealed to the Court of Appeal. However, the appeal was struck out for want of competence. The record thereof was, per the appellate Court, incomplete. In the interest of precision, hearing of the preliminary matter which led to the striking out of the appeal on July 4th, 2023; was conducted on June 5th, 2023.

Whereas the applicant contends that the Court of Appeal's ruling was delivered without his knowledge, the respondents maintain that he was aware as the company was well represented. The applicant avers further that he knew of the ruling by reading the newspaper on August 15th, 2023. That is 41 days thereafter. His recourse to have the present application filed started from such knowledge. The respondents dispute such averments too.

The Court ordered the application to be argued by way of written submissions. The lodging-schedule was complied with. Advocate Deusdedit Luteja represented the applicant. The respondents had services of Francis

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Wisdom, learned State Attorney. The applicant's submissions referred to the relevant depositions in both affidavits supporting the application. The most basic ones being the statements that: the applicant was diligent in pursuing justice; he was prevented by 'technical delay' to act timely; lateness to know the Court of Appeal' decision; and the engagement of a new lawyer for remedial measures.

I was also referred to the cases of ***Lyamuya Construction Ltd v Board of Registered Trustees of Young Women Christian Association of Tanzania***, Civil Appl. No. 2 of 2010; and ***Eliakim Swai and Frank Swai v Thobias Karawa Shoo***, Civil Appl. No 2 of 2016 (both unreported). Reliance to the first case by the applicant was to impress upon the Court that extension of time will be sustained if: the applicant accounts for delay; the delay is inordinate; he exerted necessary diligence; and there is presence of illegality to be cured.

The latter case is about 'technical delay'. The applicant argued that, time spent by an applicant in pursuing a matter which is later found to be incompetent, does not constitute his blameworthiness in the delay. Applying



such principles to the present matter, the applicant's counsel implored the Court to allow the application.

In reply, the respondents prayed to adopt the counter affidavit as part of the submissions. Further, it was contested that the applicant does not deserve the leave howsoever. To them, the principles in ***Lyamuya's case*** (*supra*) have not been satisfied by the applicant. They put it to the fore that the delay-time from July 4th, 2023 to August 23rd, 2023 is insufficiently accounted for. The respondents' attorney fervently argued that the applicant did not do enough than sitting and relaxing on the pretext that the case was in the hands his advocate.

Citing the cases of ***Lim Han Yung and Another v Lucy Yreseas Kristensen***, Civ. Appeal No. 219 of 2019 and ***Jubilee Insurance Company (T) Ltd v Mohamed Sameer Khan***, Civ. Appl. No. 439/01 of 2020; the respondents submitted that law prevents a litigant from abandoning his cause upon instructing an advocate in that regard. That is, it remains his prime obligation to make necessary follow ups. Further, it was submitted that the negligence, neglect or ignorance of the advocate so engaged do not advantage such party in an application for extension of time.



Consequently, the respondents prayed for dismissal of the application with costs.

In line with affidavital depositions and submissions of the parties, the Court will determine the application by answering one major question: whether or not grounds advanced by the applicant suffice in making this Court to allow the present application. Law requires that the applicant should demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in time. In so doing, he/she will discharge the obligation of proving how each day of delay justifiably passed by at no applicant's fault. Accordingly, the subject applicant will deserve a favorable Court's discretionary advantage as it was held in ***Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others***, Civil Application No. 130/01 of 2020 (unreported); among many other cases in such line.

Moreover, the law sets time limits not for cosmetic reasons. There are objectives to achieve. **One**, to promote the expeditious dispatch of litigation [***Costellow v Somerset County Council*** (1993) IWLR 256]. **Two**, to provide certainty of timeframe for the conduct of litigation [***Ratman v Cumara Samy*** (1965) IWLR 8]. **Three**, to enhance public trust to the



judicial system. **Four**, to manage resources effectively. Consequently, it works in the advantage of party's proper management time and money.

In law, court's power to extend time is discretionary. But such discretion is exercisable judiciously. That is, free from personal whims, sympathy, empathy or sentiment. See, *Bakari Abdallah Masudi v Republic*, CoA Criminal Application No. 123/07 of 2018 and *Bank of Tanzania v Lucas Masiga*, Civil Appeal No. 323/02 of 2017 (both unreported).

Further, it is the law under Rule 83 (1) of *the Court of Appeal Rules*, 2009 that the notice of appeal must be filed within thirty (30) days of the decision. Looking at the affidavits in this application, the delay period in this matter can be categorized into three sections. **Firstly**, the time from the 31st day after this Court delivered its judgement in Commercial Case No. 18/2023 (on Sept. 30th, 2019). **Secondly**, the time from when the Court of Appeal handed down its ruling in appeal no 290/2020 (on July 4th, 2023). **Thirdly**, the time from when the applicant allegedly became aware of the ruling in the second epoch (August 15th, 2023). Basing on the uncontested truth that this application was filed on August 23rd, 2023; the number of days of delay herein would work out to 1,422; 49; and 8 respectively.



The applicant alleges that the first section of delay above was utilized in pursuit of appeal no. 290/2020 in the Court of Appeal. This section has been christened as 'technical delay'. The case of ***Eliakim Swai*** (*supra*) was cited by the applicant to buttress that baptism. In principle, the respondent did not contest this period. I will not waste time here purporting to reinvent the wheel. Law is now settled in this country's legal jurisdiction that 'technical delay' constitutes a sufficient ground for extending time otherwise wasted by the applicant. See also, ***Mathew T. Kitambala v Rabson Grayson and another***, Criminal Appeal No. 330 of 2018 (unreported).

The second section of the delay, per the applicant, is attributable to the applicant's unawareness of delivery of the ruling in the Court of Appeal. It is deposed hereof that the applicant learnt the striking out of his appeal while reading the newspaper. That is, he was not informed of the ruling date. The last section is arguably due to the fact that upon becoming aware of the Court of Appeal's decision, he employed remedial measures accordingly.

Reasoning from the observation made in respect of the first category of the delay, therefore, the contention of parties herein is in respect of



duration falling in the last two sections of the delay. While the applicant reasons that the same has been accounted for, the respondents strongly deny such argument. Technically, the applicant argues that, so long as he was not made aware of the ruling date, time should not be accounted on his default. I will quote the relevant part of paragraph 5 of the applicant's affidavit;

"On the material (05.06.2023) day, I attended the hearing whereby after the submissions of counsel, the panel of judges (sic) of the Court of Appeal reserved the ruling to a date to be communicated to the parties by the Registrar of the Court of Appeal. Neither the Applicant nor I, as the Principal Officer of the Applicant was made aware of the day on which the ruling was to be delivered".

To answer this contention, the following analysis is, in my view, crucial. **One**, the applicant was or was he not informed of the ruling date. Though the affidavit of the applicant does not contain the order of the Court of Appeal regarding parties being put on notice by the Registrar of the Court, so long as such deposition is not specifically controverted by the respondents; and noting the two dates appearing on the ruling of the Court



of Appeal, I am less dissuaded not to believe the deponent thereof. Hence, I will work on the basis that parties were to be put on notice by the Court of Appeal regarding delivery of the ruling. All that remains to be determined here is whether the notice was indeed issued to parties.

In law, when a party's advocate is notified about the court's proceedings; his client is equally made to be aware. That is the essence of a party to state and disclose the name and address to be used by the court and opponents for purposes of service in a particular matter or proceedings in court. As an example in this regard, I will reproduce Rules 83(3) and 22 (2) of ***the Court of Appeal Rules*** to nail this point home:

*"83 (3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and where it is intended to appeal against part only of the decision, shall specify the part complained of, **shall state the address for service of the appellant** and shall state the names and addresses of all persons intended to be served with copies of the notice."*

*"22(2) In the **absence of any special direction**, service shall be made personally on the person to be served or any person entitled under rule 30 to appear on his behalf; but where a party*

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*to any proceeding **has given an address for service**, service may be effected by delivery at that address."*

In the present matter, the applicant's affidavit does not depose on whether or not his advocate was notified. Instead, the deponent is giving the fact about his not being notified of the date of ruling and/or outcome of July 4th, 2023. At the least, none of the paragraphs even points to the fact that he was making follow ups with his advocate to know if there was any notice given to him before the ruling date.

Two, the implication of the applicant being represented in Court at the time of delivery of the said ruling. The Court of Appeal ruling has it a record that, the same was read "in the presence of Mr. Michael Lugina, learned counsel for the Appellant (applicant herein)". The affidavit supporting the application is as silent as the churchyard regarding the involvement of the said counsel. Thus, it is unsafe to hold that the lawyer who appeared on that day, appointed himself to the brief or was engaged by the applicant. More so, the applicant has not revealed if, or not, he changed his team of lawyer(s). Thus, as the matter stands, the Court is inclined to agree with



respondents' assertion that the applicant was represented when the ruling was being delivered by the Court of Appeal.

Three, generally, the communication of the court judgements to the parties is not through newspapers. The applicant states that he became aware of the ruling of the appellate Court through reading Daily News (newspaper) on August 15th, 2023. Consequently, he implores this Court to peg the countdown-start of the time frame on that nub. If through this matter, it is to be laid down a principle that courts' decisions will be deemed to be known to parties when they are read in the tabloids; a dangerous and unjust rule would be established.

To begin with, not all court decisions are reported by journalists. Further, it is difficult to gauge which newspaper would be read by the parties. In addition, there is no law which compels the news-houses to publish the decisions made by the courts, let alone the timeline thereof. A good example here is that, while the ruling was delivered by the Court of Appeal on July 4th, 2023; it took about ten (10) days for the journalists to report the outcome of the proceedings.

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Four, in line with the conclusion that he was represented, can the applicant safely rely on the irresponsiveness of his counsel after taking the ruling? The applicant's advocate has not submitted on the consequence of the failure by the applicant's former advocate to report about the delivery of the ruling by the Court of Appeal. However, the respondents, on their part, ably addressed this aspect. They maintained that the advocate's negligence, sloppiness, apathy, or negligence befall the respective client. I fully associate myself with such line of argument and holdings of the Court of Appeal in the cited authorities by the respondents. More cases in this regard include, ***Athumani Rashid v Boko Omar*** [1997] TLR 146; ***Salum Sururu Nabhani v Zahor Abdullah Zahor*** [1988] TLR 41.

The last section of delay is the time from when the applicant allegedly became aware of the Court of Appeal decision; engagement of new lawyers to pursue the matter further to ultimate filing of the present application. That is, August 15th - 23rd, 2023. This section will not detain the Court. The general law is that time spent for seeking legal assistant or advocate is not a sufficient reason for extension of time [***Ally Kinanda and 3 others v Republic***, Criminal Application No. 1 of 2016 (unreported)]. In my view,



him being a corporate citizen; time spent by the applicant to resolve and ultimately secure the alternative legal representation in two (2) days, is reasonable. Hence, I do not hold it to be the subject party's fault. Law should be able to consider such efforts as being sufficiently accounted hereof.

Further, after being instructed on August 18th, 2023; Mr. Majembe deposes that his firm took it up as an assignment to have this application filed on August 23rd, 2023. It is on such basis, I find and hold that the time between August 15th through 23rd, 2023 has been accounted for.

In view of the above analysis, the time from July 4th, 2023 to August 15th, 2023 remains to be the unaccounted time of the delay. That is, the applicant has failed to satisfactorily prove how 41 days elapsed at his no-fault inaction. It is cardinal principle of law that, one applying for extension of time must account for each and every day of the delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court held that delay "of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken". See also the cases of ***Yazidi Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch &***



Another, Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa (legal personal representative of Joshua Rwamafa)***, Civil Application No. 4 of 2014; ***Dar es Salaam City Council v Group Security Co. Ltd***, Civil Application No. 234 of 2015; and ***Muse Zongori Kisere v Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019 (all unreported).

For the stated reasons above, I find that this Court has not been legitimately moved to extend the time hereof. That is, the applicant has not exhibited sufficient reason(s) to justify extension of time. This application, thus, lacks merits. It is accordingly dismissed. The respondents have earned the costs of this matter. It is so ordered.

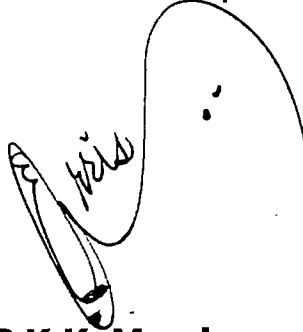


C.K.K. Morris

Judge

March 15th, 2024

Ruling delivered this 15th day of March 2024 in the presence of Advocate Hassan Sinjo for the applicant. Ms. Leonia Maneno and Mr. Renatus Kaijage, learned State Attorneys appeared for the respondents.

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C.K.K. Morris

Judge

March 15th, 2024

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