

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MOSHI**

**CIVIL APPLICATION NO. 313/05 OF 2021**

**FILSON MUSHI .....APPLICANT**

**VERSUS**

**JITEGEMEE SACCOS LTD ..... RESPONDENT**

**(An application for Extension of time to lodge a Notice of Appeal against the  
decision of the High Court of Tanzania at Moshi**

**(Sumari, J.)**

**dated 5<sup>th</sup> day of July, 2018**

**in**

**Miscellaneous Land Application No. 02 of 2017**

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**RULING**

6<sup>th</sup> & 18<sup>th</sup> July, 2023

**RUMANYIKA, J.A.:**

This is an application for extension of time made under rules 10 and 83 (1) of Tanzania Court of Appeal Rules, (the Rules). The applicant is seeking the indulgence of the Court to enlarge time allowing him to lodge a notice of appeal against the decision of the High Court at Moshi in Misc. Land Application No. 2 of 2017 dated 5<sup>th</sup> July, 2018. The application is supported by an affidavit sworn by Filson Mushi who is the applicant in this application.

The background of this matter can be briefly stated as follows:  
Before the District Land and Housing Tribunal of Moshi at Moshi (the

DLHT), the respondent successfully sued the applicant together with his wife one Joyce Filson Mushi vide Application No. 03 of 2013. The two incidentally, defaulted to repay the respective loans extended to them by the respondent, each in turn. Upon the said default, the respondent sought to sale the couple's house (the security) realizing the loan money. On 17<sup>th</sup> March, 2013 therefore, the DLHT ordered the sale of the mortgaged property.

Aggrieved by that decision, the applicant instituted Land Revision No. 1 of 2013 to challenge it but he did not succeed as it was struck out for being incompetent. Undaunted, a series of applications by him followed culminating into Miscellaneous Land Application No. 2 of 2017 in the High Court. In that application, he sought extension of time to file revision to the High Court which was dismissed for being incompetent. After its dismissal, the applicant filed Misc. Land Application No. 59 of 2018 seeking extension of time to lodge a notice of appeal against the decision of the High Court in Misc. Land Application No. 2 of 2017 which was struck out.

Still aggrieved, the applicant filed another application vide Misc. Land Application No. 28 of 2019 seeking an order for extension of time to file a notice of appeal against the decision of the High Court in the

said Misc. Land Application No. 2 of 2017. That application was dismissed for lack of merit failing to account for each day of the delay. Thereafter, the applicant filed Misc. Land Application No. 29 of 2020 for leave to appeal against the decision in Misc. Land Application No. 28 of 2019 which was dismissed for lack of merit. Still dissatisfied, he has preferred the instant application as highlighted above.

When the application was called on for hearing, the applicant appeared in person without legal representation, whereas Ms. Esther Eliud, learned counsel appeared representing the respondent.

In support of his application, the applicant adopted the notice of motion and the supporting affidavit. In his affidavit, the applicant showed the reasons for the delay to be sickness, inability due to his elderly age and financial constraints and time used to procure legal assistances. He stated further that he engaged unqualified persons to help him, since all the applications they drew for him had the incurable shortfalls thus struck out or dismissed for being incompetent.

In his oral submission, the applicant raised the issue of illegality in the impugned judgment namely, a denial of a right to be heard. He contended that, the decision of the DLHT was illegal since it was given before the lapse of the time prescribed for the applicant to defend the

suit filed by the respondent under summary procedure pursuant to Order XXXV rule 2 of the Civil Procedure Code [CAP. 33 R.E. 2019].

On its part, the respondent did not file an affidavit in reply. In her oral submission therefore, Ms. Eliud restricted her arguments to points of law only. She argued that, the application is unmerited which is liable to be dismissed with costs, since the applicant has not accounted for each day of the delay of about three years from 5<sup>th</sup> July, 2018 when the impugned judgment was delivered and 28<sup>th</sup> May, 2021 when he filed the instant application. Further, she asserted that the applicant did not show diligence in pursuing his right, if any, just as his delay was inordinate exhibiting negligence on his part. To amplify her argument, Ms. Eliud cited the decision of the Court in the case of **Lyamuya Construction Company Ltd. v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

Regarding the alleged illegality of the impugned judgment, Ms. Eliud contended that, the applicant was duly notified to appear before the DLHT and apply for leave to defend the summary suit filed against him and was given ten days to defend it, if he wished to do so, but he

defaulted. Basing on her submission, Ms. Eliud urged me to find the application unmerited and dismiss it with costs.

Rejoining, the applicant asserted that, he received the summons on 29<sup>th</sup> January, 2013 to appear and apply for leave to defend the suit on 5<sup>th</sup> February, 2013, if wished, but the DLHT pronounced its summary decision on 7<sup>th</sup> March, 2013, before the lapse of the ten days it provided.

I have considered the notice of motion and the supporting affidavit together with the submission by the applicant and the respondent's counsel and find that, the issue for my determination is whether the applicant has shown good cause for the grant of extension of time.

It is settled law that, in an application of this nature, the yardstick is for the applicant to show good cause before time can be extended for him to do an act permitted by the Rules. However, what constitutes good cause has never been defined by our statutes but by various decisions of the Court. For instance, in **Osward Masatu Mwizarubi v. Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010 (unreported), the Court stated that:

***"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion"...***

The above principle applies to the instant case. Therefore, I wish to point out from the outset that, the applicant may have spent a considerable number of days in the courts' corridors with a number of applications in pursuit of his right, but what is important is for him to show good cause for the delay.

The reasons for the delay to file the notice of appeal as deposed at paragraphs 8, 10 and 19 of the supporting affidavit are: **one**, financial constraints making him unable to institute such judicial proceedings; **two**, his elderly age causing his inability to take the essential step towards lodging a notice of appeal and **three**, his multiple and incompetent fruitless applications always prepared by an unqualified person.

To start with, it cannot be said that in the instant application the applicant has shown any good cause. I am saying so because, if the litigants' financial constraints or inaction caused by their elderly ages, justified belatedly instituted judicial proceedings, then there should have been two sets of rule 10 of the Rules to serve the advantaged and those disadvantaged, respectively. Like any other laws, rule 10 of the Rules is one which is of general application. Its edges are sharp enough to penetrate into a flesh with constant and equal force.

Nonetheless, I am mindful of the renowned legal principle that, any delay arising from the time taken by the applicant in courts' corridors pursuing his right, whether incompetently or otherwise it is not actual delay. It is referred to as technical delay which constitutes good cause for the grant of an extension of time. This legal principle has been reiterated by the Court in a number of cases including **Bank M (Tanzania) Ltd v. Enock Mwakyusa**, Civil Application No. 520/18 of 2017 and **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassoro**, Civil Application No. 342/01 of 2017 (both unreported).

Categories of technical delays are never closed. However, it could be a different and fatal scenario where such incompetent cases

causing the delays were drawn by unqualified persons contrary to section 43 of the Advocates Act. In my considered view, such delay is not technical in my considered view just as advocate's inaction or negligence does not constitute good cause. See- for instance the Court's unreported decision in **Exim Bank (Tz) Ltd v. Jacquiline A. Kweka**, Civil Application No.348 of 2020 (unreported).

Regarding the alleged illness being the cause of the applicant's delay, I am aware that where illness is sufficiently established, it constitutes good cause for an extension of time. However, having read the copy of the medical chit appended to the application, I have found that, it was issued to the applicant after he received medication as an outpatient on 7<sup>th</sup> July, 2018. There is nothing on record to suggest that he was admitted at Pasua Health Centre, Moshi or elsewhere which could have prevented him from lodging a notice of appeal within the time prescribed by the law.

Lastly is the alleged illegality of the judgment, that the applicant was denied a right to be heard. This complaint will not take much of my time for the reason that it is an afterthought, because the applicant did not show it in the notice of motion or depose that fact in the supporting affidavit. It has just been introduced verbally when



submitting in court. I wish to point out also that, in formal applications like this one, evidence is given by way of an affidavit and affidavit in reply, not *viva voce* as the applicant has attempted to persuade me to accept in this application.

In the upshot, this application is unmerited and bound to fail. Consequently, it is dismissed with costs. It is so ordered.

**DATED** at **MOSHI** this 18<sup>th</sup> day of July, 2023.

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The Ruling delivered this 18<sup>th</sup> day of July, 2023 in the presence of the Applicant in person unrepresented, Ms. Esther Eliud, learned counsel for the Respondent, is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to read "A. L. KALEGEYA".

A. L. KALEGEYA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**