

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 570/17 OF 2020

MARCO M.S KATABI.....APPLICANT

VERSUS

HABIBI AFRICAN BANK (T)LTD..... RESPONDENT

(Application for extension of time to file an appeal to the Court of Appeal of
Tanzania against the decision of the High Court of Tanzania,
Labour Division at Dar es Salaam)

(Muruke, J.)

dated the 09th day of June, 2020
in

Revision Application No. 744 of 2018

.....

RULING

14th & 17th February, 2023

KWARIKO, J.A.:

Before me is an application by a notice of motion taken under rules 10, 48 (1) (2) and 49 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) for extension of time within which to lodge an appeal against the decision of the High Court of Tanzania, Labour Division at Dar es Salaam (the High Court), in Revision Application No.744 of 2018. The notice of motion is supported by the affidavit sworn by the applicant.

In his affidavit, the applicant deponed that upon being aggrieved by the decision of the High Court which was handed down on 9th June, 2020, he lodged a notice of appeal on 01st July, 2020 to challenge the

same and requested for a copy of proceedings thereof. He added that, on 29th September, 2020, the High Court Registry notified him on the readiness of the requested documents. The applicant averred further that, when he was about to lodge his appeal, he fell sick and on 5th November, 2020 he was admitted at Kisarawe Hospital suffering from typhoid and severe malaria and was discharged on 14th November, 2020. However, he was directed to go back to the hospital on 24th November, 2020 for further treatment hence he failed to lodge the appeal within the prescribed time. The applicant annexed to his affidavit a medical chit to prove his averments. He also deponed that the intended appeal has great chance of success hence good cause for extension of time.

The respondent opposed this application through an affidavit in reply taken by one Shakila Hameer, being the respondent's Human Resource Officer who essentially put the applicant to strict proof of his affidavit averments.

On the day this application was called on for hearing, the applicant appeared in person, unrepresented, whilst the respondent had the services of Mr. Karoli Tarimo, learned advocate.

Upon taking the stage to argue the application, the applicant did not have much to say. He adopted the notice of motion and the supporting affidavit and implored me to grant his application.

On his part, having adopted the affidavit in reply, Mr. Tarimo submitted that the applicant was issued with a certificate of delay excluding the period between 1st July, 2020 when he requested for a copy of proceedings in the High Court and 18th September, 2020 when the documents were ready for collection. According to the learned counsel, as the sixty days within which to lodge an appeal expired on 17th November, 2020, the applicant has only accounted for ten days of delay when he was admitted in hospital from 5th to 14th November, 2020, thus leaving fifty days unaccounted for.

It was Mr. Tarimo's further contention that, this application was filed more than one and half months from the expiry of the period excluded by the certificate of delay and the applicant has failed to account for this delay. The learned counsel argued that extension of time to do a certain act is a discretion of the Court upon being satisfied that there is good cause shown by the applicant consistent with the decision of the Court in **Lyamuya Construction Company Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

As regards the applicant's assertion that the intended appeal has good chance of success hence good cause, the learned counsel argued that this line of reasoning is no longer sufficient cause for extension of time unless it is proved that an illegality is involved in the impugned decision.

Finally, Mr. Tarimo contented that the applicant has failed to account for each day of delay for the grant of this application reiterating the position taken by the Court in a multitude of its decisions among them the case of **Elius Mwakalinga v. Domina Kagaruki & Five Others**, Civil Application No. 120/17 of 2018 (unreported). Basing on these submissions, the learned counsel urged me to dismiss this application.

In rejoinder, the applicant maintained that his sickness is the cause for his failure to file the intended appeal within the prescribed time.

I have considered the notice of motion and its supporting affidavit together with the reply and the submissions by the parties for and against the application. The issue which calls for my determination is whether the applicant has given good cause for the delay to file his appeal. It is a settled law in our jurisdiction that, a party seeking the

Court to exercise its judicial discretion to grant the application for extension of time to do a particular action, must show good cause for failing to do what he should have done within the prescribed period.

Rule 10 of the Rules which is relevant here provides thus:

The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.

Principally, an application for extension of time to do a particular act is entirely in the discretion of the court to grant or refuse it. This discretion, however, has to be exercised judicially, the consideration being that there must be sufficient cause for doing so. What amounts to good cause has not been defined but there are certain factors which must be exhibited by the applicant for consideration by the Court. These include: an account for the delay; whether the application has been brought promptly; the exercise of diligence on the part of the applicant; and any other sufficient reasons according to the particular circumstances of the case such as the illegality of the impugned decision. See the decisions in **Lyamuya Construction Company Ltd**

(supra), **Yusufu Same and Another v. Hadija Yusufu**, Civil Application No. 1 of 2002, **Symbion Power Tanzania Limited v. Oilcom Tanzania Limited and Another**, Civil Application No. 497/01 of 2017 (both unreported). For instance, in the case of **Yusufu Same and Another** (supra), the Court stated that:

"An application for extension of time is entirely in the discretion of the Court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for doing so."

In this application, the Registrar of the High Court excluded the period for preparation of the copy of proceedings between 1st July, 2020 and 18th September, 2020. Therefore, the sixty days within which to file the appeal were reckoned from 18th September, 2020 to 17th November, 2020. Contrary to Mr. Tarimo's contention, the applicant was required to account for the period of delay from 18th November, 2020 when the sixty days to lodge his appeal had expired to 31st December, 2020 when this application was filed. In his affidavit, the applicant deposed that he was sick and admitted in hospital from 5th to 14th November, 2020. He again went back to hospital on 24th November, 2020 for checkup.

I have considered the applicant's reasons for the delay to file his appeal and accepted that the applicant was sick from 5th to 24th November, 2020 and thus he has accounted the period from 18th November, 2020 when the sixty days to file appeal had expired to 24th November, 2020 when he went back to hospital for checkup. However, the period from 25th November to 31st December, 2020 when this application was filed has not been accounted for. The applicant has not tendered evidence as to what he was doing for more than a month since he last visited the hospital.

The law is clear that in an application for extension of time, the applicant should account for each day of the delay consistent with the decision of the Court in **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), where the Court stated thus:

"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: **Elius Mwakalinga** (supra), **Lyamuya Construction Company Ltd** (supra) and **Ludger Bernard Nyoni v. National**

Housing Corporation, Civil Application No. 372/01 of 2018 (unreported)].

Further, as rightly argued by Mr. Tarimo, the applicant's contention that the intended appeal has great chance of success no longer constitutes good cause for delay to file an appeal. This is because the merit or not of an appeal can only be assessed after hearing both parties. The Court has already pronounced itself on this aspect in its previous decisions some of them are; **Tanzania Posts & Telecommunications Corporation v. M/S H. S. Henritta Supplies** [1997] T.L.R. 144, **M/S Regimanuel Gray (T) Ltd v. Mrs. Mwajabu Mrisho Kitundu & 99 Others**, Civil Application No.420/17 of 2019 and **Evelina Leonard & 18 Others v. Phanuel Charles Nzenda**, Civil Application No. 427/11 of 2019 (both unreported). For instance, in the first case, it was held *inter alia* that:

"The chances of success of an intended appeal, though a relevant factor in certain situations, could only be meaningfully be assessed later on appeal after hearing arguments from both sides. ..."

Consequently, I am therefore settled in my mind that the applicant has failed to account for the delay to lodge the appeal. Neither has he provided good cause for extension of time as sought by him. This

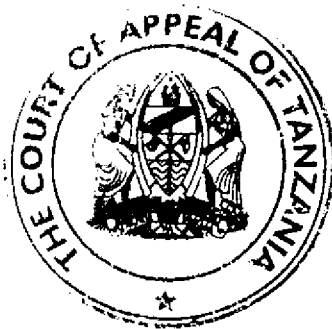
application is thus devoid of merit and it is hereby dismissed. As this matter originated from a labour dispute, I make no order as to costs.

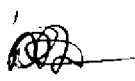
It is so ordered.

DATED at **DAR ES SALAAM** this 16th day of February, 2023.

M. A. KWARIKO
JUSTICE OF APPEAL

The Ruling delivered this 17th day of February, 2023 in the presence of the applicant in person and Mr. Kareli Tarimo, learned counsel for the respondent, is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL