

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
CIVIL APPLICATION NO. 65/01 OF 2022
HERI INVESTMENT LIMITED APPLICANT
VERSUS
DONGXING INTERNATIONAL REAL ESTATE LIMITED RESPONDENT
(Application for extension of time within which the applicant can file a reply to
the written submission lodged by the respondent from the Court of Appeal
of Tanzania at Dar es Salaam)
(Kente, J.)
dated the 22nd day of December, 2021
in
Civil Appeal No. 373 of 2021
.....

RULING

5th June, 2023 & 19 February, 2024

MASHAKA, J.A.:

By notice of motion the applicant is seeking for an extension of time to file a reply to a written submission lodged by the respondent in Civil Appeal No. 373 of 2021 which was served to the applicant on 22nd December, 2021. The application is founded on rules 10 and 48 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and supported by an affidavit averred by Tibiita Muganga, learned advocate for the applicant.

During hearing the applicant was represented by Mr. Tibiita Muganga who commenced his submission by fully adopting the contents of the notice of motion, the supporting affidavit together with the written submissions which formed part of his oral submission. The respondent was represented by Mr. Denice Tumaini, learned advocate. Being brief, Mr. Tumaini did not contest the application.

Having heard and considered the submissions by both parties, the crucial issue for my determination is whether or not the applicant has shown good cause for the delay to warrant grant of the application. It is trite law that in considering whether or not to grant such extension of time, courts need to take into account the following factors; the length of the delay; the reason for the delay: was the delay caused or contributed by the dilatory conduct of the applicant; whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision sought to be challenged; and/or the degree of prejudice to the opposite party if the application is granted. See, **Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] TLR 185, **VIP Engineering and Marketing Ltd & Two Others v. Citibank Tanzania Ltd**, Consolidated Civil References No. 6, 7, & 8 of 2006 and

Tanzania Revenue Authority v. Tango Transport Co. Ltd,
Consolidated Civil Application No. 4 of 2009 (all unreported).

A party seeking such order has to assign good cause for having not done what ought to have been done within the time prescribed by the relevant statute. I find it pertinent to set out at the beginning that it is entirely the discretion of the court to grant or refuse to extend time. But such discretion is to be exercised judicially and according to reason and justice. See **Michael Lessani Kweka v. John Eliafye** [1997] T.L.R. 152; **Laureno Mseya v. Republic**, Criminal Appeal No. 4/06 of 2016; **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (both unreported).

In exercising its discretion to grant extension of time, the Court reiterated the following benchmarks in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) that; **one**, an applicant must account for all the period of delay; **two**, the delay should not be inordinate; **three**, an applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; **four**, if the court feels that there are other sufficient reasons, such as the existence

of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

In the instant application, the applicant submitted that he was required to file written submission not later than 21st January, 2022 but he could not do so because on 14th January, 2022 her learned advocate had travelled to Ifakara. At Ifakara, he fell sick and was admitted for several days. On 14th February, 2022 he was allowed to continue with his activities after his health had stabilized.

As averred under paragraphs 6, 7 and 8 of the supporting affidavit he travelled from Ifakara to Dar es Salaam on 15th February, 2022 and upon arrival he took two days that is 16th and 17th February, 2022 to recuperate. On 18th February, 2022 he prepared the present application and was ready for filing it. He filed the application electronically on 20th February, 2022 which was not successful and necessitated him to file it manually on 25th February, 2022 which was not backed with any evidence.

The applicant has accounted for the days that the learned advocate was sick and admitted in hospital for 20 days from 14th January, 2022 to 2nd February, 2022 as gleaned at annexure HI 1,

admitted again from 6th February, 2022 to 9th February, 2022 and attended clinic for four days. As argued, he was allowed by the hospital administration to continue with his daily activities on 14th February, 2022. In **Murtaza Mohamed Raza Virani & Another v. Mehboob Hassanali Versi**, Civil Application No. 448 of 2020 (unreported) the Court had this to say: -

"Given sickness is a condition which is experienced by a sick person and since the 1st applicant said due to his sickness, he failed to serve the respondent in time and has attached evidence to prove that he was sick then I see no reason to doubt his condition at that time."

In the light of the above observation, it is hard on my part to doubt the assertion of the applicant that sickness prevented her from lodging a reply to the written submission by the respondent who did not resist the application. Indeed, annexure HI 1 provides that learned advocate for the applicant was undergoing treatment. I fully subscribe to the above position of the Court, given that the applicant has accounted for the delay.

In fine, I find that good cause for the delay has been shown warranting the Court's exercise of its discretion in favour of the

applicant. That said, I grant the uncontested application and order the applicant to file her reply to the written submission in Civil Appeal No. 373 of 2021 within 30 days from the date of this ruling.

Costs shall abide the result of the pending appeal.

DATED at DAR ES SALAAM this 16th day of February, 2024.

L. L. MASHAKA
JUSTICE OF APPEAL

The Ruling delivered on this 19th day of February, 2024 in the presence of Mr. Tibitha Muganga and Constantine Masola, learned counsel for the Applicant also holding brief for Mr. Denice Tumaini, learned counsel for the Respondent, is hereby certified as a true copy of the original.




O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL