

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA
MISC. CIVIL APPL. No. 97 OF 2019**

(C/F Civil Case No. 12 of 2018, Resident Magistrate's Court)

**NATIONAL INSURANCE CORPORATION OF TANZANIA
LIMITED.....APPLICANT
VERSUS
EMROD SALEWI MOSI.....RESPONDENT**

RULING

3/07/2020 & 14/08/2020

GWAE, J

The applicant has found himself outside the prescribed time to file his appeal out of time and therefore has preferred this application under section 14 (1) of the Law of Limitation Act Cap 89 R.E 2002 seeking an indulgence of this court to extend time to file an appeal to this court against the decision of the Resident Magistrate's Court of Arusha in Civil Case No. 12 of 2018.

The application is supported by the sworn affidavit of one Verdiana Macha, Chief Legal Counsel of the applicant and the same is founded on the following facts; that, on 24/04/2019 the Resident Magistrate's Court delivered its judgment, unfortunately the applicant's advocate was absent for reasons of sickness NIC-2. On 27/05/2020 the applicant wrote a letter requesting for copies of proceedings, judgment and decree, after several follow ups he was eventually availed with the same on 07/10/2020 and on

the very same date the applicant filed this application for an enlargement of time in order to be able to file his appeal out of the prescribed period.

The respondent through his counter affidavit strongly contested the applicant's application on the grounds that, the applicant at the trial court was represented by two advocates and therefore if one of them was sick then the other advocate would have appeared on the date fixed for judgment delivery. The respondent further stated that, the copies of the proceedings, judgment and decree were available for collection since 06/08/2019 as he was able to collect the same on 20/08/2019. In addition to that the respondent contended that, the copy of judgment attached by the applicant bears two different dates on the certification stamps, whereby one shows that the document was certified on the 06th August 2019 and the other shows that it was certified on the 7th October 2019.

This application was disposed of by way of written submissions and the parties were duly represented by the learned counsel namely; Mr. **Christopher Bulendu** (adv) and **Mr. Frank Wilbert Makishe** (adv) for the applicant and respondent respectively.

Supporting his application the applicant basically reiterated what has been stated in his sworn affidavit and maintained that the delay was as a result of failure to obtain necessary documents to accompany the intended appeal. He cemented his arguments by inviting this court to make a reference to a decision of the Court of Appeal of Tanzania in the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (Unreported).

In response, the respondent's submission is also based on what he had stated in his counter affidavit. The respondent further averred that there was lack of requisite diligence on the part of the applicant as the copies of proceedings, judgment and decree were available for collection effectively from 6th August 2019 but the applicant failed to account on the delay.

In his rejoinder, the applicant's counsel maintained what he stated in his submission in chief.

It is settled principle that in applications for extension of time, the applicant will be granted the sought extension of time upon demonstration of sufficient cause of delay. Conversely, it is also settled that the required sufficient cause is dependent on deliberation of various factors some of them revolve the nature of actions taken by the applicant immediately before or after becoming aware of the decision or order of the intended appeal, that, the delay is imminent or minor occurrence as was correctly observed by the Court of Appeal in Tanzania in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) where the following may be deciphered:

- i. The applicant must account for all the period of delay.
- ii. The delay should not be inordinate.
- iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

- iv. If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

Traversing into the present application, the applicant's main reason for delay is failure to obtain the copies of the proceedings, judgment and decree on time (paragraph 10 of the applicant's affidavit). I am alive of the legal position that, where a delay in obtaining certified copies of judgment, proceeding and decree may constitute sufficient reasons for the court to exercise its discretion to grant extension of time. The Court of Appeal, full bench, in the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) at page 11 the court held that;

"In conclusion, we are of the firm view that, the delay to be supplied with copied of proceedings and judgment and the two copies of decrees containing different material particulars, contributed to the delay by the respondent to appeal within the prescribed period."

Similarly, the Law of Limitation (supra) under section 19 is also very clear on exclusion of computation of limitation period from the time between when the applicant applied for supply of the certified copies of the proceeding, judgment and decree and the time when he was supplied. However under the circumstances of the present application, I find contradictions as to when the applicant was supplied with the certified copies of the proceeding, judgment and decree.

According to the applicant's affidavit, the applicant wrote a letter requesting for the said copies on 27/05/2019 and upon several follow ups he was supplied with the necessary copies on 7/10/2019. The applicant has attached a copy of the decree which show that the same was issued on 7/10/2019, and a copy of judgment which bears two seals with two different dates. The first seal demonstrates that the judgment was certified on 6/08/2019 whereas the second seal is dated 7/10/2019. The respondent has vehemently opposed this assertion and stated that the documents were ready for collection since 06/08/2019, the respondent attached a copy of the court's register which show that the respondent collected his certified copies on 20/08/2019. The respondent further attached the certified copies of the proceeding, judgment and decree, all documents bearing the RMC's Court seal dated 06/08/2019.

I have carefully gone through the attached documents to the applicant's affidavit and those attached to the respondent's counter affidavit, without beating around the bush, it is quite obvious that the certified copies of the proceedings, judgment and decree were ready for collection from 06/08/2019. Even the certified copy of the judgment attached in the applicant's affidavit has two seals and the first seal is dated 06/08/2019 which shows that the copy was ready for collection since that date. The respondent has also attached a copy of the court register showing the date when the respondent collected his copy to be on 20/08/2019.

It appears that the applicant wrote a letter to request the said copies but immediately thereafter he slept relying on the said request letter

without making any efforts. Had the applicant acted diligently in making follow ups he would probably have even attached a letter of reminder to the court to substantiate that he indeed made some follow ups. As the court records show that the respondent was able to collect his copies on 20/08/2019, had the applicant been diligent enough he would have also obtained the same copies earlier.

That being told, and in applying Section 19 of the Law of Limitation Act (supra) I am obliged to exclude the dates from 27/05/2019 to when the documents were ready for collection i.e 06/08/2019. That being the position and since this application was filed on 09/10/2019 the applicant is found to be within the statutory period as envisaged under sub section 2 and 3 of section 19 of the Law of limitation Act.

I am of this view because the period of appealing to this court from the Court of Resident Magistrates or District Court is ninety (90) days from the date the decision against which it is desired to be appealed against was delivered (Item 1 of Part II to the 1st Schedule of the Law of Limitation Act). However this is subject to the exclusion where copies of proceedings, judgment or order have been requested for and the same mandatorily form parts of an intended appeal, thus computation accrues on the date the certified copies were availed.

Consequently, as the applicant was within time to file his appeal when he presented this application, the application is therefore granted. The applicant is given **ten (10)** days from the date of this order within

which to file his appeal. Costs of this application shall abide to the end result of the intended appeal.

It is so ordered.




M.R.GWAE
JUDGE
14/08/2020