



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

MISC. CIVIL APPLICATION NO. 52 OF 2019

MATHIAS RWEYEMAMU.....APPLICANT

VERSUS

**THE GENERAL MANAGER
KAGERA COOPERATIVE UNION (1990) LTD.....RESPONDENT**

RULING

Date of last order 06/11/2020

Date of Ruling 04/12/2020

Kilekamajenga, J.

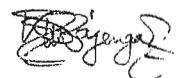
The applicant approached this Honourable Court seeking for the following orders:

- (a) Extension of time to file application for leave to sue the respondent on the reliefs relinquished in filling civil case No. 3/2000 out of time;*
- (b) Any other reliefs this Court deemed fit to grant.*

The application was made by way of chamber summons supported by an affidavit deposed by the applicant. The application is made under **section 14(1) of the Law of Limitation Act, Cap. 89 RE 2002**. When the application was scheduled for hearing, the applicant appeared in person whereas the respondent

was represented by the learned Advocate, Mr. Projestus Mulokozi. In the oral submission, the applicant submitted that he filed Civil Case No. 02 of 2004 against the respondent. The applicant was challenging wrongful termination of employment; he averred that he was terminated from employment by the respondent without being given the right to be heard. As a result, he sought damages for breach of contract. When the case was filed, the respondent raised a point of preliminary objection and Hon. Judge Luanda upheld the objection; the case was finally dismissed. Upon that dismissal order, the applicant appealed to the Court of Appeal of Tanzania through Civil Appeal No. 55 of 2008 which was determined on 08th April 2014. The Court of Appeal of Tanzania dismissed the appeal on the reason that the applicant was required to seek leave of the Court before filing a fresh case.

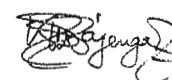
Thereafter, the applicant sought review before the Court of Appeal of Tanzania vide Civil Application No. 03 of 2014 which was decided on 5th December 2017. The application for review was also dismissed. The applicant made another attempt to the Court of Appeal of Tanzania through Civil Application No. 152/04 of the 2018 which he later withdrew it on 04th December 2019. On 19th December 2019, the applicant filed the instant application seeking leave to extend time to enable him sue the respondent on the relinquished reliefs in the Civil Case No. 02 of 2004.



The counsel for the respondent was also given an opportunity to respond. Before the oral submission, Mr. Mulokozi prayed for the counter affidavit filed by the respondent to be adopted. He further submitted that the applicant has failed to advance sufficient cause for extension of time. The applicant failed to prove that the Court of Appeal delayed in issuing the order; he has therefore failed to account for the delay. The applicant has also failed to show which relief was relinquished in 2000. Furthermore, Hon. Judge Luanda stated that the applicant had no right to claim part of the relief he relinquished in the case of 2000. Therefore, this Court cannot grant leave to the application which was denied.

Mr. Mulokozi argued further that under Order II, Rule 3 of the Civil Procedure Code, Cap. 33 RE 2019, the applicant cannot seek leave to sue the respondent while he intentionally omitted to sue for it. He further averred that extension of time may be given where there is a triable issue. The applicant has failed to disclose the triable issue to warrant this Court to order extension of time because the applicant's employment was terminated while he was under probation. He fortified his argument with the case of **Stella Temu v. Tanzania Revenue Authority [2005] TLR 178**.

Mr. Mulokozi submitted further that extension of time is the discretion of the Court and that negligent and lack of diligence by the applicant is not a sufficient



cause for extension of time. As long as Civil Case No. 02 of 2004 was dismissed, the applicant cannot, at this stage, bring another case based on the same cause of action. He finally urged the Court to dismiss the application with costs.

When rejoining, the applicant insisted that there is a triable issue that he was wrongly terminated from employment on the reason that he was under probation. He also objected the allegation that he was negligent in trying this matter. He further stressed that he never delayed to file the application because the application before the applicant withdrew the application from the Court of Appeal on 04th December 2019 and he immediately filed the instant application. He urged the Court to allow the application.

After considering the applicant's affidavit, the respondent's counter affidavit and oral submissions made by the parties, it is apposite at this point to consider the merits in this application. It is an established principle of law that the Court may grant extension of time where the applicant has advanced sufficient cause or good cause for the delay. This principle of the law has been reiterated in number of cases including the cases of **Tanga Cement Co. v. Jummanne Masangwa and Another** Civil Application No. 6 of 2001 (unreported); **Sospter Lulenga v. Republic, Criminal Appeal No. 107 of 2006**, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic, Criminal Appeal No. 130**

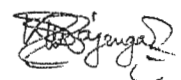


of 2003, Court of Appeal of Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others [1973] EA 207**.

Also, it should be understood that extension of time is the discretionary power of the court which must be exercised judiciously. This position of law was stated in the case of **Tanga Cement Co. v. Jumanne Masangwa and Another, Civil Appeal No. 6 of 2001** (unreported) the court had this to say:

*This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of **diligence** on the part of the applicant'.*

Therefore, the applicant is obliged, under the law, to show sufficient cause for the delay and also take prompt steps or diligence in ensuring that the matter is lodged in court on time. In the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), which is quoted with approval in the case of **Bishop Roman Catholic v. Casmir Richard Shemkai**,



Civil Application No. 507/12 of 2017, CAT at Tanga (unreported), the Court stated guiding principles in granting extension of time:

1. *That, the applicant must account for all period of delay.*
2. ***The delay should be inordinate.***
3. ***The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.***
4. ***If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality on the decision sought to be challenged*** (emphasis added).

The same principles of law are reiterated in the case of **Zawadi Msemakweli v. NMB PLC, Civil Application No. 221/18/2018**, CAT at Dar es salaam (unreported) thus:

*'Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion...the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether applicant was diligent, **whether there is point of law of sufficient importance** (emphasis added) such as the illegality of the decision sought to be challenged and overall importance of complying with prescribed timelines.'*

In the instant case, the only reason advanced by the applicant is that he was prosecuting the case in the Court of Appeal of Tanzania until in 2018 when he

finally withdrew his third application before the Court of Appeal of Tanzania. The cases attached to this application show that the applicant was employed by the respondent but his employment was terminated on 27/10/1999. As a result, the applicant sued the respondent vide Civil Case No. 3 of 2000 in the District Court claiming for, *inter alia*, payment of annual leave, unpaid subsistence and repatriation allowances and month's salary in lieu of notice. The case was decided in favour of the applicant and the respondent was ordered to pay him Tshs. 9,469,673/=. Four years later i.e. in 2004 the applicant filed another suit in the High Court claiming for Tshs. 300,000,000/ and Tshs. 156,525,320 as general and specific damages. The suit was dismissed by Hon. Judge Luanda after sustaining a point of preliminary objection. (**See, Mathias Rweyemamu v. General Manager (KCU) Limited, Civil Application No. 03 of 2014, CAT at Bukoba**).

When Hon. Luanda was determining the objection, he had the following observation:

'Whatever the position, the parties appear to have missed the point. From the above narrated facts, there is no doubt that the plaintiff omitted to challenge the termination. The issue now is whether the plaintiff is entitled to bring a fresh suit-challenging the termination –basing on the same cause of action. In my view that fall under Rule 2(3) of Order II and not Rule 2(1) and (2) of the Civil Procedure Code, Cap. 33. Rule provides:

(3) A person [is] entitled to more than one relief in respect of the same cause of action may sue for all or any such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any reliefs so omitted.'

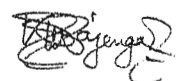
The Judge went on stating that:

In our case the plaintiff did not seek leave of the court, In any case the plaintiff was very much aware of the relief and yet he omits to claim. In view of Rule 2(3) of Order II of the Civil Procedure Code, Cap. 33, he is barred from bringing a fresh suit.'

(See, Mathias Rweyemamu v. General Manager, Kagera Cooperative Union (1990), Civil Case No.2 of 2004)

After this ruling, the applicant appealed to the Court of Appeal of Tanzania. His appeal was dismissed. He again applied for review which was also dismissed. He made another attempt calling for the full bench of the Court of Appeal of Tanzania. However, he finally withdrew his application from the Court of Appeal in 2019 and immediately filed the instant application. In this application, he is seeking an order to enlarge time so that he can file an application for leave to comply with the advice given by Hon. Judge Luanda way back in 2007.

Now, this being the sole reason for extension of time, I do not find if the applicant was diligent in prosecuting his so called relinquished claim against the



respondent. I tend to believe that the applicant is employing delaying tactics for his own interest. In fact this is an abuse of court processes.

Based on the above reasons, the applicant has failed to advance sufficient cause to warrant this Court to extend time. I hereby dismiss the application with costs. Order accordingly.

DATED at BUKOBA this 04th Day of December, 2020.




Ntemi N. Kilekamajenga.
JUDGE
04/12/2020

Court:

Ruling delivered in the presence of the applicant present in person and the learned counsel for the respondent, Mr. Projectus Mulokozi (Advocate).




Ntemi N. Kilekamajenga.
JUDGE
~~**23/10/2020**~~
04/12/2020

