

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA

MISC. CIVIL APPLICATION NO. 26 OF 2019
*(Arising from the decision of District Court of Mbeya
in Civil Appeal No. 07 of 2019 and
Original Civil Case No. 11 of 2019 Uyole Primary Court)*

BOAZ MWAIFWISI MWAKIFUMBWA.....APPLICANT
VERSUS
BERTHA JONES MARO.....RESPONDENT

R U L I N G

Date of last order: 22/10/2020

Date of Ruling: 22/12/2020

NDUNGURU, J.

This is an application for extension of time to file an appeal out of time against the decision of the District Court of Mbeya while exercising appellate jurisdiction in Civil Appeal No. 07 of 2019. The application is by way of chamber summons which is predicated on Section 25 (1) of the Magistrate Court Act (Cap 11 R.E. 2019) and Rule 3 of the Civil Procedure (Appeal in Proceedings Originating in Primary Courts) Rules, G.N. No. 312 of 1964.

This application is supported by an affidavit deposed by the one, Boaz Mwaifwisi Mwakifumbwa, the applicant herein. In other side, the respondent vehemently disputed the applicant's application through the counter affidavit sworn by Joyce M. Kasebwa, the respondent's counsel.

At the hearing of this application, the applicant and respondent were, respectively, represented by Mr. Pacience Maumba and Ms. Joyce M. Kasebwa, both learned counsel. This Court allowed the parties to argue the application by way of written submissions. Both parties abide by the schedule fixed by the Court.

In his written submission, Mr. Maumba argued that, the period within which the applicant was spent waiting for the copies of proceedings and judgment, bearing in minds that when the District Court of Mbeya delivered its judgment on 29th day of May, 2019 he was at DRC Congo. He added that, it is amount to sufficient reasons in filing his appeal before this Court especially bearing in mind that the applicant is a layman and unrepresented.

He went on to submit that, the extension of time is purely upon discretion and domain of the Court to grant it. He cited the case of **Benedict Mumelo vs. BOT (2006) EA 227** to bolster his submission. Also, he contended that, the gist of this application is that, the

consideration of his privity of the alleged contract which is the root of the whole case.

The counsel for the applicant further submitted that, the delay was not out of sheer negligence but it was due the existence of peculiar circumstances of which the applicant was confronted with. He added that, these are sufficient reasons to justify the present application. To cement his argument he cited the case of **Republic vs. Yona Kaponda and Eight others (1985) T.L.R 84**. Finally, he prayed for the Court that this application be granted.

In response, Ms. Kasebwa, learned advocate, disagreed with Mr. Maumba from the outset. In the first place she stated that, the applicant spent four months from the date when the District Court of Mbeya delivered its judgment on 29th day of May, 2019 to the date when the copy of judgment was certified on 24th day of July, 2019 hence the applicant has no sufficient cause. He cited the case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs. The Chairman Bunju Village Government and 11 others**, Civil Appeal No. 147 of 2006, Court of Appeal of Tanzania (unreported).

Also, Ms. Kasebwa contended that, the law set 30 days as the time limit for aggrieved party to appeal to this Court against the decision of the District Court when exercising its appellate or revisional jurisdiction.

She added that, the computation of time for purpose of lodging appeal start to run on the date of the delivered of the judgment. She added that, the parties are bound by their pleadings and also the submission is not part of the evidence hence the ground that he was delay because he was at DRC Congo is baseless.

Further, Ms. Kasebwa contended that, nowhere the applicant stated in his affidavit that he was delay because he was at DRC Congo. She invited this Court to consider the case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs. The Chairman Bunju Village Government and 11 others, (supra)** and **Tanzania Union of Industrial and Commercial Workers (TUICO) vs. Mbeya Cement Company & National Insurance Corporation (T) Limited (2005) T.R.L 41.**

She went on to submit that, the matters originating from the Primary Court there is no need to attach the proceedings, judgment or decree as the same is not a requirement of the law hence the applicant lacks sufficient cause for grant of extension of time. To cement her argument she cited the case of **Abdallah S. Makumba vs. Mohamed Lilame (2001) T.L.R 99** and **Safari Tweve vs. Hezron Elias Kyomo**, Misc. Civil Application No. 20 of 2019, High Court (unreported).

She continued to argue that, it is undisputed that from the date of judgment up to the date filed this application 104 days lapsed without any clarification and failed to account for each day of his delay. She cited the case of **Republic vs. Yona Kaponda and 9 others (1985) T.L.R 84** to support her submission.

Again, Ms. Kasebwa contended that, the paragraph 5 of the applicant's affidavit say nothing on matter of law to be determine by this Court in order to grant extension of time. She added that, the law is very clear that whenever there is a point of law should be pointed out as illegality and must be on the face of the record such as the question of jurisdiction, not one that would be discovered by a long drawn argument or process.

To reinforce her argument she referred this Court to the case of **Mbwiga Mpola vs. Ikhoho Village Council & 26 others**, Misc. Land Application No. 46 of 2019, HC (unreported), **Principal Secretary, Ministry of Defence and National Services vs. Devram Valambhia (1992) T.L.R 185** and **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal of Tanzania (unreported).

Moreover, Ms. Kasebwa stated that, this Court must consider good cause and an account of each day for delay. She cited the case of **Daniel Njago & another vs. Kombe Robert Mwampeta**, Misc. Civil Application No. 80 of 2018, High Court, **Godfrey Mbilinyi vs. The Republic**, Misc. Criminal Application No. 145 of 2019, High Court, **Nyabazere Gora vs. Charles Buya**, Civil Appeal No. 164 of 2016, Court of Appeal of Tanzania, **Mbogo vs. Shah (1968) EA** and **Ramadhani J. Kihwani vs. TAZARA**, Civil Application No. 401/18 of 2018, Court of Appeal of Tanzania to support her submission.

Ms. Kasebwa further argued that, the applicant failed to demonstrate the sufficient cause to warrant this Court to grant the enlargement sought. In conclusion, she prayed for the Court to dismiss this application with costs.

From the respective submissions, both counsels are in argument that, the pertinent issue for determination is whether the applicant has demonstrated good cause to warrant the Court to exercise its judicial discretion.

In the case of **Henry Muyaga vs. TTCL**, Application No. 8 of 2011, Court of Appeal of Tanzania (unreported) the Court interpreted judicial discretion to extend time as unfettered, but several factors must be considered including the length of delay, the reason for the delay,

and the degree of prejudice that the respondent may suffer if the application is granted.

Again, it is established principle of the law that, in order for the Court to exercise its discretionary power in extending time, good cause for the delay must be shown by the applicant. However good cause has not been defined. It is therefore up to the applicant to sufficiently convince the Court that good cause exists. The same principle is well elaborated by the Court of Appeal of Tanzania in the case of **Fares Munema vs. Asha Munema**, Civil Application No. 122 of 2015, (unreported) where the Court stated that:

"The applicant has not advanced a reason or reasons to explain away the decision in filing the intended reference within time. It will therefore follow that no reason (s) let alone sufficient reason (s) has/have been shown to warrant the exercise of the Court's discretion any power under Rule 8."

This application for extension of time to file an appeal out of time basically hinges on three limbs namely; firstly an account of delay to obtain the copy of proceedings and judgment, secondly the applicant is layman and third the complaint of illegality.

With regard to the first limb of the application, I see no any justification on this point. I hold so because the law does not impose the

mandatory requirement to the aggrieved party to attach the copy of the proceedings and judgment on the matter originated from the decision of the Primary Court when she/he intends to appeal against such decision to the higher Court.

Also, even in his written submission in chief, the applicant expressly admitted that, the said documents were not necessary for filing his appeal before this Court. Again, I subscribe the position stipulated in the case of **Abdallah S. Makumba vs. Mohamed Lilame (2001) T.L.R 99** and **Safari Tweve vs. Hezron Elias Kyomo**, Misc. Civil Application No. 20 of 2019, High (unreported).

I now deal with the second limb of the justification for the application that time be extended on the ground that the applicant is a layman and unrepresented before the District Court of Mbeya hence, the applicant prays this Court to extend time. I reject this ground because the ignorance of law has never featured as a good cause for extension of time. Therefore, the ignorance of the legal procedure on how to appeal against the decision originated from the Primary Court cannot feature as a good cause for this Court to extend time. See the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, Court of Appeal of Tanzania (unreported).

Turning to the third limb of the justification for the application, the subsequent question which arises in regard to the application at hand is whether or not, in the present application there has been raised a sound complaint of illegality in the decision sought to be impugned by the applicant.

I would observe, at first, that it is settled jurisprudence of the Court that, where a point of law involved in the intended appeal is a claim of the illegality of the impugned decision, that in and of itself constitutes good cause for the Court to extend the limitation period. See the case of **Tumsifu Kimaro (The administrator of the estate of the late Eliamani Kimaro) vs. Mohamed Mshindo**, Civil Application No. 28/17 of 2017, Court of Appeal of Tanzania (unreported).

Moreover, a claim of illegality of the challenged decision constitutes good reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay. However, the threshold is that, a point of law on illegality must be apparent on the face of record in order to constitute good cause to grant the extension of time sought. See the case of **Dimension Data Solutions Limited vs. WIA Group Limited & 2 others**, Civil Application No. 218 of 2015, Court of Appeal of Tanzania and **Tanzania Breweries Limited vs. Herman Bildad Minja**, Civil

Application No. 11/18 of 2019, Court of Appeal of Tanzania (both unreported).

In his written submission, Mr. Maumba alleged that, the illegality is that the District Court of Mbeya did not consider the participation of the applicant in the alleged privity of contract. In her part, Ms. Kasebwa opposed that, the applicant's affidavit does not point out any issue of illegality and also quote paragraph 5 of the applicant's affidavit to convince this Court.

In my view, it seems that, the counsel for the respondent does not aware on the existence of the amended affidavit of the applicant in Court. I hold so because the said paragraph 5 which the counsel for the respondent referred thereto is not the one which is reflected in the amended affidavit of the applicant.

For a better understanding, I see is very crucial to reproduce paragraph 5 of the amended affidavit:

*"5. That, being dissatisfied with the decision of the District Court Mbeya I need to appeal to the High Court of Tanzania for consideration of my participation in the alleged **privity** of contract."*

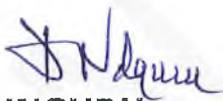
From the above observation, it is my considered view, the applicant failed account for each day of his delay hence this Court cannot exercise

its discretionary power to extend time for filing an appeal out of time to the applicant.

In the upshot, I find out that, the applicant failed to illustrate good cause that would entitle him extension of time as sought. Further this application is hereby dismissed with costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
22/12/2020

Date: 22/12/2020

Coram: D. B. Ndunguru, J

Applicant: Absent

For the Applicant: Absent

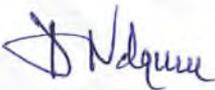
Respondent: Absent

For the Respondent: Mr. Deda Luko – Advocate

B/C: M. Mihayo

Court: Ruling delivered in the presence of Mr. Deda Luko advocate
for the respondent in the absence of the applicant.




D. B. NDUNGURU
JUDGE
22/12/2020