

**IN THE HIGH COURT OF TANZANIA
(MWANZA DISTRICT REGISTRY)
AT MWANZA**

MISC. APPLICATION NO. 139 OF 20018

MWANZA SACCOS LTD APPLICANT

VERSUS

DOROTEA ROBERT..... RESPONDENT

Date of the last Order: 16/04/2020

Date of Ruling: 17/04/2020

RULING

ISMAIL, J.

Pursuant to an application, preferred under the provisions of **Section 14 (1)** of the Law of Limitation Act, Cap. 89 [R.E. 2002], **sections 68 (e)** and **95** of the Civil Procedure Code, Cap. 33 [R.E. 2002], I am called upon to determine if the Court's discretion can be exercised to grant an extension of time within which the applicant may institute an appeal out of time.

The intended appeal is in respect of RM. Civil Case No. 67 of 2013, in which the applicant, along with Makile Auction Mart and

General Brokers, featured as defendants. The respondent, who was the plaintiff therein, moved the trial court to grant several reliefs arising out of what the respondent contended that the applicant and its co-defendant 'invaded' her house and took assorted household items and a cash sum of TZS. 5,000,000/-, ostensibly to realize the sum due from the respondent's husband and in respect of which the respondent was allegedly a surety. Incensed by the then defendants' conduct, the respondent took her complaint to court. Her efforts bore fruits when the trial court ordered the defendants to pay the sum of TZS. 7,600,000/- being the value of the seized household items. The court further ordered payment of general damages to the tune of TZS. 1,000,000/-, simultaneous with awarding costs to the plaintiff (the respondent). The judgment was handed down on 24th October, 2018.

The application is supported by an affidavit sworn by Lucas B. Masanja, the applicant's principal officer and it sets out grounds on which the prayer for extension of time is based.

In the supporting affidavit, the applicant avers that, the matter from which the intended appeal emanates, was instituted and

handled during the applicant's previous leadership, whose mandate was terminated on allegation of abuse of office and other related malpractices. It is the applicant's further averment that the current management which came in office in March, 2018 was kept oblivious to the proceedings, and it took a perusal of the records to realize that the decision in respect of the said proceedings was delivered on 24th October, 2016. The applicant is convinced that the intended appeal has overwhelming chances of success.

The respondent did not file an affidavit in opposition to the application. It is also edifying to note that the respondent's appearance in this Court has been extremely dismal.

At the hearing of the application, the applicant was represented by its principal officer and fended for itself, while the respondent maintained her usual absence. As a result of this unjustified absence, the Court ordered that hearing of the matter should proceed *ex-parte*. The applicant's representative began his submission by praying to adopt the contents of the affidavit sworn in support, as part of the submissions. He contended that his leadership came in power in 2018, succeeding the previous leadership,

following the suspension of previous leadership on some credibility issues. He argued that the leadership was not aware of the case against the applicant up until August, 2018, when they were served with a notice of execution of the decree issued in the respondent's favour. He submitted further that the leadership wrangles began in 2015 and persisted for all that long until February, 2018, when the new leadership was installed on intervention by the government.

The applicant's officer attributed the delay to reconciliation of the records that also entailed engaging the previous leadership with a view to getting the correct position on the matter. He urged the Court to accede to the request to have the application granted.

From the applicant's submission, the singular issue for my determination is, whether this application has demonstrated any sufficient grounds for its grant.

It is trite law that extension of time is not granted as of right. It is as a matter of equitable discretion, exercised judiciously and upon a proper analysis of the facts, and application of law to facts. The intended grantee of this prayer has a duty of satisfying the court by presenting a credible case upon which such discretion may be

exercised. This will also require the applicant to act equitably. This persuasive position was elucidated by the Supreme Court of Kenya in **Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others**, Sup. Ct. Application 16 of 2014. It held:

"Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault so as to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of courts which litigants have to lay a basis [for], where they seek [grant of it]."

The foregoing decision received an immediate boost, when the same Court laid down principles that must be considered in granting an extension of time. This was in respect of the case of **Aviation & Allied Workers Union of Kenya v. Kenya Airways Ltd, Minister for Transport, Minister for Labour & Human Resource Development, Attorney General**, Application No. 50 of 2014, in which it was held:

"... We derive the following as the underlying principles that a court should consider in exercise of such discretion"

1. *extension of time is not a right of a party; it is an equitable remedy that is only available to a deserving party at the discretion of the court;*

2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
4. where there is [good] reason for the delay, the delay should be explained to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, the public interest should be a consideration for extension."

Back home, this lucid position was proffered by the Court of Appeal of Tanzania in ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported). In this decision, key conditions for grant of enlargement of time were set out. These are:

- (a) *The applicant must account for all the period of delay.*
- (b) *The delay should not be inordinate.*
- (c) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*
- (d) *If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

The principles set forth in the cited cases are intended to ensure that the applicant of enlargement of time is not denied the right of appeal, unless circumstances of his delay in taking action are inexcusable and his or her opponent was prejudiced by it (see **Isadru v. Aroma & Others**, Civil Appeal No. 0033 of 2014 [2018] UGHCLD 3).

Deducing from the principles accentuated in the cited decisions, the decisive point for consideration in granting extension is demonstration of the existence of **reasonable or sufficient cause**. Failure to do so negates the exercise of such discretion by the Court, and constitutes a failure to uphold the need to safeguard the court's authority, or the quest to ensure that the rules are fully adhered to and obeyed (See the case of **Ratman v. Cumarasamy** (1964) 3 All ER 933). It is also a means of ensuring the Court does not benefit a party who is at fault. In **KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another** (1972) E.A. 503 it was held that "... no court will aid a man to drive from his own wrong."

In applications of this nature sufficient cause is discerned from affidavits that support the accompanying applications. This is in cognizance of the fact that, unlike submissions from the bar which

serve as narrations that complement the evidence deposed, affidavits are evidence (See: ***The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman Bunju Village and 11 Others***, Civil Appeal No. 147 of 2006). It is affidavits from which sufficiency of the reasons for the applicant's failure to take steps, at a particular time, is gauged. Our jurisprudence has not been able to coin the definition of sufficient cause. However, courts have laid down circumstances which, when fulfilled, they can be said to constitute a sufficient cause. In ***The Registered Trustees of the Archdiocese of Dar es Salaam*** (supra), the Court of Appeal made the following observation:

"It is difficult to attempt to define the meaning of the words "sufficient cause". It is generally accepted however, that the words should receive liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bonafides, is imputable to the appellant."

In arriving at that position, the superior Court quoted with approval the decision in ***Dephane Parry v. Murray Alexander Carson*** [1963] EA 546. The relevant passage in the said decision states as follows:

"Though the court should no doubt give a liberal interpretation to the words "sufficient cause", its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant."

In the subsequent decision of **Henry Leonard Maeda and Another v. Ms. John Anael Mongi** CAT-Civil Application No. 31 of 2013 (unreported) the scope of sufficient cause was streamlined by holding, at page 19, thus:

*"... the courts may take into consideration, such factors as, **the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted.**"*

See also: **Gibson Petro v. Veneranda Bachuya**, HC. Civil Revision No. 10 of 2018; **Idrisa Suleman v. Kresensia Athanas**, HC. Misc. Land Application No. 39 of 2017 (both unreported); and **Mang'ehe t/a Bukine Traders v. Bajuta** (Civil Application No. 8 of 2016 [2016] TZCA 8.

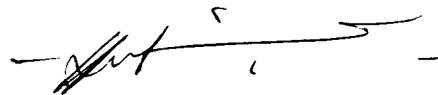
A dispassionate review of the affidavit sworn in support of the application reveals that the reason for the dilatoriness is the

stalemate that marred the leadership of the applicant for three years until March, 2018, when the new leadership took over. It is also complemented through the oral submission that even after that, the new leadership was kept in oblivion until the day the respondent launched execution proceedings. From these averments and submissions, can it be said that sufficient cause has been adduced by the applicant? I hasten to answer this question in the affirmative. Circumstances that led to dilatoriness in taking essential steps to challenge the decision cannot be said to border on a desired loathness, or any sense of negligence by the applicant's current office bearers, who took over office in the midst of a serious crisis that tore the membership down the middle. No amount of diligent effort would unravel this matter if the respondent hadn't let the cat out of the bag through the execution proceedings that she mounted.

It is also clear that, though the applicant's principal officers took time, from when they got wind of what had happened to the time they instituted the present application, it cannot be said that they sat idle and twiddled their fingers and let time pass. In their own account, they required to be acquainted with the facts and consult the previous leadership before they took action. I find this

Over all, the applicant's conduct overly convinces me that it is in consistent with the principles propounded in the **Aviation & Allied Workers' Union** and **Lyamuya's case**. These principles fully and deservedly operate in the applicant's favour. Accordingly, I hold the view that the application has passed the legal threshold set for grant of extension of time. I consequently grant the application. I make no order as to costs.

It is so ordered.



M.K. ISMAIL
JUDGE
17.04.2020

Date: 17/04/2020

Coram: Hon. M. K. Ismail, J

Applicant: Present through their representatives

Respondent: Absent

B/C: B. France

Court:

Ruling delivered in chamber, in the presence of the applicant but in the absence of the respondent. Also present Ms. Beatrice B/C, this 17th April, 2020.



M. K. Ismail

JUDGE

At Mwanza

17th April, 2020