

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISCELLANEOUS CIVIL APPLICATION NO. 25 OF 2020**

(Originating from Civil Case No. 17 of 2016)

**UAP INSURANCE TANZANIA LTD ..... APPLICANT**

**VERSUS**

**ZAKARIA INNOCENT LYIMO ..... 1<sup>st</sup> RESPONDENT**

**EMMANUEL A. MAKATA ..... 2<sup>ND</sup> RESPONDENT**

**GOODLUCK JOSEPH MBOYA ..... 3<sup>RD</sup> RESPONDENT**

**PANONE & COMPANY LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**MUTUNGI .J.**

The applicant, pursuant to **section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002** has moved this Court seeking for extension of time within which to file an appeal out of time against the judgment in Civil Case No. 17 of 2016 dated 20<sup>th</sup> June 2019 by the Resident Magistrate Court of Moshi, and costs for the application.

The application is supported by the corresponding affidavit deposed by the learned advocate Kelvin Kidifu and contested by the first and second Respondents. During

hearing of this application, the matter proceeded with 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the 3<sup>rd</sup> Respondent though served by substituted service did not enter appearance whereas the 4<sup>th</sup> respondent through Mr. Ngole Advocate did not contest the application. The same proceeded by way of written submissions.

The applicant submitted that on 20<sup>th</sup> June 2019 the court delivered its judgment and as he was not satisfied with such judgment, he communicated with the trial court on 8<sup>th</sup> July 2019 requesting to be supplied with copies of judgment and decree so that he can initiate the appeal process. The effort was fruitless until 17<sup>th</sup> September 2019 when he was supplied with a copy of judgment and 20<sup>th</sup> May 2019 supplied with a copy of decree. After he was supplied with the same, he lodged an appeal online which was rejected for being out of time.

The Applicant further stated, he is alive with the requirement of the law that, for the court to extend time the applicant must show diligence and not apathy, negligence or sloppiness. The appellant cemented this point by referring the court to the cases of **Tropical Air (Tz) LTD vs Godson Eliona Moshi (unreported) Civil Application No. 9 of 2017** and **Lyamuya Construction Company Ltd vs**

**Board of Registered Trustee of Young Women's Christian Association of Tanzania (Unreported).**

The Applicant further submitted the decision of the trial court is tainted with illegalities as stated under para 5 of his affidavit. The illegality is apparent on the face of the record where the trial court proceeded ex parte without the order to that effect. On 28<sup>th</sup> March 2019 the court made an order for hearing on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> days of April 2019 but on 1<sup>st</sup> April 2019 it proceeded in absence of defendants and for that the applicant was denied the right to be heard. The applicant referred this court to the case of **Principal Secretary Ministry of Defence and National Services vs Devram Valambhia (1992) TLR No.185** where the court laid down the principle that, illegality of a decision is one of the reasons why a court can extent time.

He also referred this court to the case of **Mumello vs Bank of Tanzania (2006) TLR 227** as well as the case of **Kalunga and Company Advocates vs National Bank of commerce (2006) TLR 235** where the highest court opined as to what amounts to a good cause to warrant extension of time.

The applicant further invited the court to the case of **Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women Christian Association**

**of Tanzania, Civil Application No. 2 of 2010 (unreported)**

where the court can extend time when it feels there are sufficient reasons to do so.

The applicant concluded by praying the application be granted.

Reacting to the submission by the Applicant, the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that, the applicant had failed to demonstrate reasonable or sufficient reasons for the delay to appeal within time. They submitted the law is very clear for the court to extend time, the applicant has a duty to account for each day lost or delayed, something which the applicant had failed to do.

The respondents drew the attention of this court by referring the court to the case of **Godwin Ndemesi and Karol Ishengoma vs Tanzania Audit Corporation (1995) TLR 2001** and cautioned the court to avoid being swayed off by sympathy even if injustice is to be occasioned to the applicant.

The respondents further submitted, no application can be electronically out of time, all that is required is proof of an arguable appeal, they cited the case of **Court of Appeal**

**of Eastern Africa in Mbogo vs Shah 1968 EA** in support thereof.

In that regard the Respondents maintained it will be a wastage of time and abuse of the court process if time is extended.

The two respondents also cited the case of **Mohamed Hassan Hole vs Keya Jumanne Ramadhan (CAT Dodoma, Civil Appeal No.19/1992) Unreported** where it was highlighted that, when it comes to time limitation, this is a merciless monster that entertains no speck of sympathy whatsoever.

The respondents further held a firm view that, the applicant's reasons for delay are unmaintainable since he had failed to demonstrate good cause for the inordinate delay. The applicant was digging his own grave by filling documents of appeal which he knew would be rejected.

Concerning the case of **Tropical air (TZ) Limited vs Godson Eliona Moshi (Unreported) Civil Application No. 9 of 2017** and that of **Lyamuya construction Company Ltd** cited by the Applicant, the Respondents argued, these cases are distinguishable to the present case. In those cases the applicants were not aware of the dates when the

respective judgments were delivered but managed to show diligence and accounted for all the period of delay.

The respondents were further of the view that, the decision of the trial court was not tainted with illegalities. All that transpired is that it was important to fix three consecutive days of hearing to cover the speed track. To ones surprise the applicant did not appear on the first day fixed and the court decided to proceed ex parte. This was a proper procedure to be followed in the given scenario.

Alternatively the respondents were of the view, the applicant could challenge the illegality of the judgment and decree through a revision and not an appeal as per **section 79(1) (c) of Civil Procedure Code, CAP 33 R.E 2019.**

Conclusively the respondents argued the application is intended to cause them inconveniences hence it should be dismissed with costs.

In rejoinder, the Applicant buttressed he had reasons for the delay and accounted for each day of delay. As if not enough there was a glaring point of law to be determined by this court, which was the order of the trial Magistrate to proceed ex parte without an order to that effect.



Reacting to the submission by the Respondents that the Applicant ought to have filed a Revision, the Applicant was of the view that a Revision cannot be entertained where there is room to appeal.

Having painstakingly gone through the record and submissions by the rival sides, I find the issue for determination is ***whether there are sufficient or good reasons to grant extension of time to the applicant.***

There are numerous cases which provide for the factors to be considered before granting extension of time to appeal. Among these are the holdings of the Supreme Court of this land in the cases of **Glory Shifwaya Samson vs Raphael James Mwinuka, Fatuma Hussein Shariff vs Alikhan Abdallah (as the Administrator of the Estate of Sauda Abdalla) & 3 Others, International Airline of the United Arab Emirates v Nasser Nasser** and **Lyamuya Construction Company Ltd v The Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT-Arusha (unreported)**. The Court of Appeal basically settled the exercise by laying down principles which guide courts before exercising their discretion. These can be noted down as follows: -

- a) That 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 that he intends to take, and
- d) Illegality of the decision.

I have observed keenly among other factors for delay the applicant has complained of the late supply of copies of the appeal documents which are mandatory documents required in instituting an appeal. The records shows that the judgment was delivered on 20<sup>th</sup> June 2019 and the applicant's application to be supplied with the appeal documents made on 8<sup>th</sup> July, 2019.

To this the applicant has annexed several letters to prove what had transpired ever since he made the said request vide a letter with reference no. BMA/UAP/3/2019/02. Thereafter his advocate from BM Attorneys wrote the court a letter dated 15/8/2019 as a reminder to his letter requesting for the appeal documents. As though not enough on 10<sup>th</sup> October, 2019 his advocate wrote another letter on the same request. The letter fell on a deaf ear and on 14<sup>th</sup> November, 2019 he had yet to write another



reminder letter through his advocates, "Annexure "BMA-2". Annexed was yet another reminder for a copy of the Decree dated 20<sup>th</sup> January, 2020. To cap it all the copy of decree was issued on 20/5/2020. The applicant has also annexed "BMA-4" a copy of JSDS/e-case registration (electronic copy) showing that his appeal had been rejected for being out of time. He is later seen in court on 24/7/2020 in the present application.

Considering the above sequence of events, it does not take magic to find, the applicant had tirelessly and vigorously fought for his right of appeal. He was indeed diligent in his actions to fulfil his desire to file his intended appeal, as one of the test already noted earlier in the ruling laid down by the highest court of this land.

The applicant has raised the issue of illegality as one of the factors to be considered. The court resorts to the case of **Fatma Hussein Shariff vs Alikhan Abdallah (As Administrator of the Estate of Sauda Abdallah) & 3Others (Civil Appeal No. 536/17 of 2017, CAT at page 13** which comes into play that: -

*"It should be noted that, for illegality to be considered as a good cause for extending time, it has to be on point of law of sufficient*

*importance and it must be apparent on the face of record and not one that would be discovered by a long drawn argument or process."*

The Applicant averred the illegality is such that the matter proceeded ex parte without the order to that effect. I need not scroll through the proceedings, one can merely on the face of the record find what the applicant is referring to which needs the Appellate Court's attention and a decision thereto.

For the aforementioned reasons, I find the applicant has demonstrated sufficient reasons as envisaged by **section 14 (1) of the law of Limitation Cap 89 R.E. 2019** and the court proceeds to grant him the extension sought. He is to file his intended appeal within 21 days from the date of this ruling. Each party is to bear own costs.

It is so ordered.



**B. R. MUTUNGI**  
**JUDGE**  
**27/04/2021**

Ruling read this day of 27/4/2021 in presence of the 1<sup>st</sup> and 2<sup>nd</sup> respondents and in absence of the applicant duly notified.

  
**B. R. MUTUNGI**  
**JUDGE**  
**27/4/2021**

RIGHT OF APPEAL EXPLAINED.

  
**B. R. MUTUNGI**  
**JUDGE**  
**27/4/2021**