

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY**

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION No. 06 OF 2021

**(Arising from PC Civil Appeal No. 50 of 2020 in the High Court of
Tanzania at Mwanza)**

BEATUS LAURIAN NDIHAYE.....APPELLANT

VERSUS

MARIAM KITOELO.....RESPONDENT

RULING

27/05/2021 & 24/06/2021

TIGANGA, J.

This is an application for extension of time within which to file an application for restoration of PC Civil Appeal No. 50 of 2020, and restoration of the said appeal which was dismissed by this court for want of prosecution following the non appearance of the appellant on the date when the appeal was set for hearing.

This application has been preferred under section 65(4) of the Customary Law (Limitation of Proceedings) Rules, 1963 and section 95 of the Civil Procedure Code [Cap 33 R.E 2019] and any other enabling provision of the law. It has been supported by the applicant's own



affidavit in which he stated ill health as the main ground forming the basis of the application.

The application was however resisted by the respondent who in her own counter affidavit contested the averments by the applicant and stated that the applicant was not sick and neither did he travel. That he was doing his business all that time.

When the matter was called on for hearing, parties appeared in person and unrepresented.

As he was submitting in support of the application, the applicant prayed to adopt the affidavit filed in support of the application and stated that the appeal was dismissed because he was sick. It is and for that reason, he prays that it be restored.

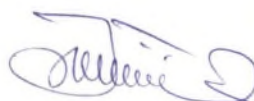
In her reply, the respondent argued that the applicant was not sick when he failed to appear in court. She submitted that herself and the applicant are neighbours; therefore she used to see him at his home. She prayed for the application to be refused.

In his short rejoinder, the applicant stated that he was sick and prayed that the application be granted as prayed.

That being the summary of the application, the affidavit, the counter affidavit and the arguments made in support and against the application, it is worthy to note that, an application for extension of time is grantable at the discretion of the court and upon sufficient cause being shown by the person applying for it. In granting such an application, there are conditions which have to be met. Those conditions were stipulated by the Court of Appeal in a landmark case of **Lyamuya Construction Company Limited vs Board of Trustees of YMCA**, Civil Application No. 2 of 2010, CAT (unreported) in which one of the conditions is that if the court feels that there are sufficient reasons.

With regards to the delay, and the reason as to why the applicant failed to appear, it is the applicant's contention that he fell sick and left his home to Kigoma where he went for treatment at the traditional healer where he stayed for three months. It is also his contention that, as soon as he returned, he came to court to ask for the fate of his appeal. That is when he was told that the same was dismissed for want of prosecution, hence this application.


As already stated above, the court before which an application for extension of time is brought, can exercise its discretion to grant the extension upon sufficient cause being shown. At this point therefore, an



important question to ask oneself is whether or not sufficient cause have been shown to move this court to exercise its discretion to grant extension of time and restore the application.

The applicant's only reason advanced is illness. I am well aware that as of late there are decisions which are to the effect that illness constitutes sufficient cause for extension of time. However, such illness must be sufficiently proved. Looking at the affidavit filed in support of the application, the applicant has attached to the affidavit a letter from the traditional healer indicating that he was admitted at his place where he was receiving treatment and was later discharged after he was well. That traditional healer further proved his professionalism by attaching a copy of his Certificate of incorporation No. A.91041 issued on 29/01/2019. To me, this is enough to prove that the applicant was indeed ill and therefore could not attend the matter thus deserving the extension of time he is praying for and restoration of the dismissed appeal. The reason advanced by the applicant suffices to be sufficient cause upon which this court can exercise its discretion.

Consequently, by these reasons, I hold that, the applicant has managed to show sufficient reasons for the grant of extension of time.



The application therefore succeeds the time is hereby extended and the dismissed appeal PC Civil Appeal No. 50 of 2020 is hereby restored.

It is so ordered.

DATED at MWANZA this 24th day of June, 2021



J.C. TIGANGA

JUDGE

24/06/2021