

**THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT PAR ES SALAAM**

**MISC CIVIL APPLICATION NO. 605 OF 2020**

(From PC Civil Appeal No. 27 of 2019, High Court of Tanzania, Dar es salaam Registry^)

**UWENONACHO SALUM ..... APPLICANT  
VERSUS  
MOSHI SALUM NTANKWA .....RESPONDENT**

**RULING**

Date of Last Order: 17/5/2021

Date of Ruling: 28/6/2021

**MASABO, J.:-**

Uwenonacho Salum, the applicant herein, is discontented by the decision of this court dated 9<sup>th</sup> April 2020 which dismissed his appeal (PC Civil Appeal No. 27 of 2019) for want of merit. He now wants to appeal to the Court of Appeal but the time within which to file the appeal has lapsed. Thus, he has moved this court under section 11(1) of the Appellate Jurisdiction Act [Cap 141 RE 2019] for an order for extension of time. The application is accompanied by an affidavit deposed by Charles E. Lugaila who is identified as the Applicant's counsel.

The background to the application is such that, the applicant was the appellant in PC Civil Appeal No. 27 of 2019 which ended barren on 9<sup>th</sup> April 2020 after it was dismissed for lack of merit. Soon after the delivery of the impugned judgment, he expressed his intention to appeal to the Court of Appeal by filing his notice of appeal on 8<sup>th</sup> May, 2020 which was just a day after he was furnished with the copy of judgment on 7<sup>th</sup> May 2020. In the course of preparing an

application for a certificate of a point of law, it came to his attention that his name and that of the respondent as were wrongly printed. Instead of "UWENACHO SALUM" it was printed as "UWENACHO **SALUMU**" whereas the respondent's name was printed as MOSHI **SALUMU** NTANKWA instead of "MOSHI **SALUM** NTANKWA". To arrest the situation, he withdrew the notice of appeal initially filed in the Court of Appeal and filed an application for rectification of errors in

**Misc. Civil Application No. 263 of 2020.**

The application ended fruitful on 11<sup>th</sup> August 2020. However, after been furnished with the copies of the ruling and the rectified judgment he observed that the rectification was partly done as the errors in the respondent's name had not been corrected. After further follow-ups, on 12<sup>th</sup> November 2020, he was furnished with the rectified judgment, decree and proceedings and on 16<sup>th</sup> November 2020 he filed this application. Copies of the notice of appeal previously filed in the Court of Appeal, the notice for withdrawal, the wrongly printed judgment and the corrected version were appended to the affidavit.

The respondent, evasively disputed part of the affidavit but conceded that indeed, the applicant obtained the rectified copies on 12<sup>th</sup> November 2020.

Hearing proceeded in writing. Both parties had representation. Mr. Charles Lugaila, counsel for the Applicant submitted that the prayer for extension of time is within the discretion of the court and is exercised upon a sufficient cause been shown by the applicant. He submitted further that, although the term sufficient cause is not defined in any statute, it is established by looking at the reasons advanced by the applicant to ascertain whether the reasons for the delay have

been fully explained. He argued that, through the affidavit, the applicant has demonstrated a good cause as the notice of appeal was filed on 8<sup>th</sup> May 2020 and having noticed the discrepancies on the names of the parties, he withdrew it on 23<sup>rd</sup> June 2020 and applied for rectified copies which were furnished to him on 12<sup>th</sup> November 2020 just 6 days before he filed this application on 18<sup>th</sup> November, 2020. In support of his submission, he cited the case of **Fortunatus Masha vs William Shija & Another** [1997] TLR 154 at page 155 and **Benedict Shayo vs Consolidated Holdings Corporation as Official Receivers of Tanzania Film Company Limited**, Civil Application No 366/01 of 2017 where Ndika JA faced by a similar issue held that, the delay was not an actual delay, but an excusable technical delay.

Responding, Mr. Shiza John, counsel for the Respondent cited the case of **Mbogo v Shah** [1968] EA where it was held that, all factors relevant to the delay such as the lengthy of the delay, whether there is an arguable case and the degree of prejudice likely to be suffered by the defendant if time is extended must be taken into consideration before exercising the discretion to extend time. In the present case, the discretion cannot be exercised as the applicant has not demonstrated sufficient reasons for delay and has not demonstrated whether his appeal has chances to succeed considering that he has lost the case at the primary court, district court as well as the high court. In fortification of his point that, the applicant is duty bound to provide materials to enable the court to exercise its discretion, he cited the case of **Ratnam v Kumarasamy** (1964)3 ALLER. 933 and concluded that the delay to obtain copies of judgment and decree after rectification does not constitute a good cause. It was argued further that a party seeking extension of time must account for each day of delay but the applicant herein has terribly failed hence the decree cannot issue.

Rejoining, Mr. Lugaila reiterated his submission in chief and stated that his application has merit. He submitted further that, the intended appeal stands a great chance to succeed and the issue raised in the intended appeal to wit, the proceedings in PC Civil Appeal No. 27 of 2019 is marred by errors particularly on the distribution shares, is purely a point of law.

I have carefully considered the submissions made by the parties. Under, Rule 83(1) and (2) of the Court of Appeal of Tanzania Rules, 2009 a person intending to appeal to the Court of Appeal against a decision of the High Court in a civil matter must file a Notice expressing his interest to appeal within 30 days from the date of the judgment. The time may be enlarged under section 11(1) of the Appellate Jurisdiction Act [Cap 141 RE 2019] which cloths the High Court with discretionary powers to extend time. As argued by both parties, the discretion is exercised judiciously upon the applicant demonstrating a good cause as illustrated in **Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No, 2 of 2010, Court of Appeal (unreported) where it was stated that;

As matter of general principle, it is the discretion of the Court to grant extension of time. But discretion is judkiet. And so, it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrarily.

Accordingly, the issue for determination before me is whether the applicant has demonstrated a sufficient cause to warrant the extension of time.

As argued by both counsels, a good cause is determined by considering

numerous factors notably; whether the applicant has accounted the period of delay and whether he acted with diligence and not apathy, negligence or sloppiness in pursuit of the intended appeal. Extension of time may also issue where the court is satisfied 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 (See **Registered Trustees of the Marian Faith Healing Centre v The Registered Trustees of the Catholic Church of Sumbawanga Diocese**, Civil Appeal No. 64 of 2007, Court of Appeal (unreported)).

In the present case, it is undisputed that the judgment in PC Civil Appeal No 27 of 2019 which is sought to be challenged was determined on 9<sup>th</sup>

April, 2020 whereas this application was filed on 18<sup>th</sup> November 2020, thus the delay is for six months which is fairly inordinate. Facts as to the errors in the judgment and the decree were also undisputed and so was the averment that the applicant withdrew the notice of appeal filed earlier in the Court of Appeal, obtained an order for rectification and that on 12<sup>th</sup> November 2020 he was finally furnished with rectified copies of judgment and decree and soon thereafter he lodged this application.

In the foregoing facts which are well supported by the annextures to the affidavit which I have thoroughly considered, it is crystal clear that the applicant has ably demonstrated that the court is solely to blame for the delay. In my settled view, the application falls within the realm of section 19(2) of the Law of Limitation Act, Cap 89 RE 2019 which states that:

19.-(2) In computing the period of limitation prescribed for an

appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

When this provision is applied to the facts of the present application and the duration between the date of the impugned judgment on 9<sup>th</sup> April 2020 and 12<sup>th</sup> November 2020 when the rectified copies of judgment were furnished on the applicant, it will follow that when this application was filed on 18<sup>th</sup> November 2020, the time within which to appeal against the decision had not lapsed and the applicant was, therefore well within time.

As held in **Benedict Shayo vs Consolidated Holdings Corporation as Official Receivers of Tanzania Film Company Limited** (supra), the delay was not an actual delay but an excusable technical delay.

Accordingly, I allow the application. The applicant is to lodge his notice of appeal within 14 days. I refrain from making any orders as to costs as the application emanates from a probate cause.

DATED at DAR ES SALAAM this 28<sup>th</sup> June 2021



**J.L.MASABO**

**JUDGE**