

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

MISC. CIVIL APPLICATION NO.20 OF 2021

*(Originating from the High Court of Tanzania at Mtwara in Civil Case
No.4 of 2017 before Mr. Justice P.J. Ngwembe, J)*

NURDIN HASSAN BWATAMU.....APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE (IGP).....1ST RESPONDENT

HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of last Order: 7/6/2022
Date of Judgment: 12/7/2022

LALTAIKA, J.:

This is an application for extension of time to lodge a notice of appeal to the Court of Appeal and also an extension of time within which to lodge an appeal to the Court of Appeal of Tanzania out of time against the judgment and decree of this court dated on 2nd August, 2017 in Civil Case No.4 of 2017. This application has been brought under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] and any other enabling provisions of the law.

The application is supported by an affidavit affirmed by the applicant depicting the reasons for the application. The application has been resisted by the respondents vide their joint counter affidavit sworn by Ms. Getruda Christopher Songoi, learned State Attorney.

When this matter came for hearing on 28/4/2022 the applicant appeared in person, unrepresented while both respondents were being represented by Ms. Getruda Christopher Songoi, the learned State Attorney. The parties acceded the matter to be disposed of by way of written submissions and a schedule to that effect was jointly agreed upon.

The applicant submitted that the current application is a result of Civil Appeal No.154 of 2020 before the Court of Appeal which was withdrawn at his pleasure on 4th day of June,2021 at Mtwara sub registry. The applicant stressed that he withdrew his appeal because it was lodged out of time. He further submitted that the withdrawal was caused by the fact that the letter to the Deputy Registrar of the High Court of Tanzania at Mtwara dated on 27th day of September 2019 requesting for supply of certified copies of proceedings and judgment of the said Civil Case No.4 of 2017 was presented and received on 3rd of October,2019 by the open Registry of the Court of Appeal and the same was acted upon when it was [already] out of time.

In that regard the appellant went further and submitted that the delay to comply with provisions of Rule 90(1) of the Tanzania Court of Appeal Rules is found under paragraph 5 of the applicant's affirmed affidavit. To substantiate his argument, he stressed that upon lodging his Notice of Appeal to appeal to the Court of Appeal on 19th day of August,2019 he was under preparations for a trip to Muhimbili National Hospital in Dar es Salaam.

The applicant insisted that due to his preparation and travelling to Muhimbili for medication, time for applying for the certified copies of the impugned judgment, proceedings and exhibits lapsed for almost two

months. He argued that after his return from Muhimbili he presented his letter in the High Court Registry on 3rd day of October, 2019 requesting for the same.

Moreover, the applicant submitted that when Civil Appeal No.154 of 2020 lodged at the Court of Appeal of Tanzania at Mtwara was scheduled for hearing on the 4th day of June 2021 and he was served with the respective summons, he decided to seek legal advice from a legal facility regarding his appeal thus he was advised that his appeal was filed out of time. As a result, the appellant stressed, when the matter came for hearing he withdrew it with an intention of refiling the same.

It is the applicant's submission further that his delay was not intentional but rather caused by his trip to Muhimbili National Hospital in Dar es Salaam where he spent his substantial time completing a course of medical examinations and respective treatments. He argued that when the booklets to the Court of Appeal were served to the respondents neither of them filed any objection that the appeal was time barred before the Court of Appeal. The applicant further maintained that even when he served the respondents with the written submissions in support of his appeal none had filed a reply challenging the timely prevalence of the appeal.

In the same premises, the applicant stressed that when both parties appeared before the court for hearing, the respondents were unaware of the defect featuring his appeal. He insisted that it was him who addressed the Court of Appeal that his appeal was filed out of time thus he prayed to withdraw the same with an intention of refiling after complying with the required procedures. Lastly, it was his humble submission that section

11(1) of the Appellate Jurisdiction Act and any other enabling provisions of the laws be used to rescue the situation and enable justice to be done.

In response, the respondents made their joint submission vide the service of Ms. Songoi. At the outset the respondent adopted the contents of the counter affidavit sworn by Ms. Songoi on 2/11/2021. Thereafter, the respondents argued that it is undisputable that this court has power to grant extension of time. Nevertheless, the learned counsel for the respondents argued, such power has to be exercised sparingly and based on material facts provided by the applicant on his delay. To fortify her argument, Ms. Songoi cited the case of **Kalunga and Company Advocates vs NBC Ltd** [2006] TLR 235.

It is Ms. Songoi's submission that the applicant has not advanced any sufficient reason to warrant this court to grant him an extension of time to file his notice of appeal to the Court of Appeal and also be allowed to appeal to the Court of Appeal. She stressed that the applicant had failed to act diligently in prosecuting his case.

In addition, the learned counsel averred that the applicant had advanced only one reason of his delay that is sickness due to sustained injury as a result of a motorcycle accident. She stressed that it was known when the accident happened and further, the applicant did not inform the court about the accident. To this end, counsel for the respondent argued that the applicant had acted negligently in pursuing this matter.

Ms. Songoi reiterated that the applicant lacked due diligence and was negligent since the intended impugn judgment was delivered on 2/8/2019 and he lodged his notice of appeal on 19/8/2019. She insisted that the applicant wrote a letter requesting for certified court's

proceedings on 27/9/2019 which was requested out of time. Moreover, the learned counsel for the respondents stated that on 24/4/2019 the applicant was referred to Muhimbili Hospital and got treatment on 16/5/2019 but he has not accounted for the 21 days of delay. To back up her argument, Ms. Songoi referred to paragraph 5 of the applicant's affidavit where he insisted to have gone to Muhimbili and managed to request the proceedings on 27/9/2019.

Ms. Songoi contended that the argument advanced by the applicant under paragraphs 4 and 5 of his affidavit were simply lies and called upon this court to reject the application. To cement her argument, Ms. Songoi referred this court to the case of **Ignazio Messina vs Willow Investment SPRL**, Civil Application No.21 of 2001 where the Court of Appeal stated that "an affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support an application. False evidence cannot be acted upon to resolve any issue".

It is Ms. Songoi's submission that the applicant was required to account for each day of delay by providing reasonable explanation for his delay. She cited the case of **Lyamuya Construction Company Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010. The respondents' counsel went further to argue that the applicant had not accounted for his delay of two years.

Having keenly considered submissions by both parties, I am inclined, at this juncture, to determine whether the applicant has demonstrated good cause to entitle him for extension of time to file a notice of appeal.

to the Court of Appeal of Tanzania and also extension of time to lodge his appeal to the Court of Appeal.

In his submission, the applicant has pointed out that the main reason for his delay is sickness. There is no dispute that the applicant was involved in a motorcycle accident before the Civil Case No.4 of 2017 was concluded by this court. As can be gleaned from the records of the court file before me, annexure "NHB-2" features the applicant's PF-3 which was issued on 17/11/2018. There is also a transfer form issued on 23/4/2019 which bears the information about the transfer of the applicant from Ligula Regional Referral Hospital to Muhimbili National Hospital at Muhimbili Orthopaedic Institute (MOI).

Furthermore, there is a letter from Muhimbili National Hospital to whom it may concern which was issued on 16/5/2019. This letter features very important information as far this matter is concerned. The first information is that the applicant did thoracolumbar X-ray Pelvis X-ray and was kept in analgesic with minimal relief. The second information is about advice to the applicant and also to whom it may concern that the applicant should not travel via rough road and long-distance travel which would provoke illness. The third information is that the applicant was required to return to Muhimbili National Hospital for further tests and treatment from 24/08/2019 to 25/09/2019.

Furthermore, immediately after the applicant had completed the schedule of the Muhimbili National Hospital on 27/9/2019 he wrote a letter to the Deputy Registrar and requested to be supplied with the certified copies of the proceedings which according to his facts contained in his affidavit and submission in chief he presented at the registry of this court

on 3/10/2019. In turn, on 09/10/2019 the Deputy Registrar replied to the applicant that the requested certified copies of proceedings were ready for collection. Consequently, this court issued a certificate of delay in which it excluded twenty (20) days when computing time for instituting the appeal in the Court of Appeal.

I am fortified that any reasonable court would take a concern that it was difficult for the applicant immediately after attending the clinic on 25/9/2019 to be in Mtwara to proceed with the procedural issues of his appeal to the Court of Appeal of Tanzania taking in account that there are some conditions which the Muhimbili National Hospital issued for the applicant or to whom it may concern especially on travelling on rough roads and long distances which would provoke illness.

I am persuaded that this court should invoke the provision of the overriding objective principle provided under section 3A (1)(2) and 3B(1) and (2) of the Appellate Jurisdiction Act. In line with these sections, I find that it is important for this court to allow the extension of time to lodge the appeal to the Court of Appeal out of the prescribed time.

In upshot, I hereby extend thirty (30) days for the applicant to lodge his Notice of Appeal and also lodge his appeal to the Court of Appeal from the date of this ruling with no order as to costs.

It so ordered



E. LALTAIKA

A handwritten signature in black ink, appearing to read "E. Laltaika", is written over the printed name and title.

JUDGE

12.7.2022

COURT

This ruling is delivered under my hand and the seal of this Court on this 12th day of July 2022 in the presence of the Ms. Getruda Songoi, learned State Attorney for the respondents and Mr. Mussa Saidi next of kin [Younger Brother] to the applicant.



E. LALTAIKA

A handwritten signature in black ink, appearing to read "E. Laltaika", written over a horizontal line.

**JUDGE
12.7.2022**