

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 17 OF 2021

*(Originally from the Resident Magistrates Court of Arusha at arusha, Civil Case No.
23 of 2018)*

GODROSE ELIUD MOLLEL..... APPLICANT

VERSUS

ELIBARIKI OBEID PALLANGYO..... RESPONDENT

RULING

12th July & 22th August, 2022

TIGANGA, J.

This is an application for extension of time filed by the applicant applying to be granted leave to appeal out of time against the judgment and decree of the Resident Magistrates Court of Arusha at Arusha in Civil Case No. 23 of 2018.

A brief background of the case is that, the applicant inhere, was the defendant in Civil Case No. 23 of 2018 which was decided against her. Having been dissatisfied by the decision, the applicant intended to appeal against the decision. However, for reasons given in the affidavit filed in support of the application and exemplified in the written submission filed in support of the application, the applicant did not file his appeal on time

as mandatorily required by law. He then decided to apply the application for extension of time to file her appeal out of time.

Before the trial court as gathered from the records, the respondent was claiming specific and general damages against the applicant. The principal sum so claimed was at the tune of 108,000,000/=. He also claimed the motor vehicle make Mitsubishi with registration No. T 784 AMR Model Canter.

In this application, parties were represented by counsel, while the applicant was represented by Mr. Elibariki Maeda, learned Advocate the respondent enjoyed the service of Mr. Joseph Hillary and Ms. Devotha David, learned Advocates. With leave of the court the application was made by way of written submissions. Both parties filed their respective submissions as ordered by the Court.

In his submission in chief, Mr. Maeda submitted at the outset, by adopting the affidavit sworn by himself to form part of his submission. He said, he is applying for extension of time to file the appeal out of time because of the following reasons;

First that, he was delayed by the trial court itself from being supplied with necessary documents for filing the appeal. Second that, the impugned judgment is tainted with some irregularities and illegalities

which need to be corrected by the appellate court in order to make the records clear and out of flaws.

On the ground of being not timely supplied with necessary documents, Mr. Maeda argued that, the judgment was delivered on 1st April, 2020 but upon several follow ups and reminders, the copy of judgment was supplied to him on 17th July, 2020 without a certified copy of a decree. That, it was on 22nd September 2020 when they were supplied with the certified copy of the decree. However, at their dismay, while preparing for the application, they noted that, the decree which was supplied to him was defective as it had a variance of dates with that of the judgment. Mr. Maenda went on submitting that, on 5th February, (without mentioning a year), he requested for rectification of the said defective decree.

However, in his submission he does not show has to whether or not the rectified decree was supplied to him up to the time of filing this application. He also said that, up to the time he was submitting, the proceedings had neither been supplied to him nor to his client. To buttress his contention that there are good causes for this court to exercise its discretion and grant the application. In insisting the importance of excluding the days used to obtain copies of the proceeding and judgment,

Mr. Maeda cited the case of **Selemani Jabiri versus Hon. Mary Chatanda and Another**, Civil Application No. 139/02 of 2018 CAT (unreported).

On rebuttal, the Advocates for the respondent conceded that, in terms of section 19(2) of the law of limitation Act, [Cap. 89 R.E 2019] in order to appeal, the copies of judgment and decree are necessary documents to be annexed to the memorandum of appeal. He submitted that, their absence renders the appeal incompetent. However, the Advocates rejected the argument that, proceedings are also necessary documents to be attached with the memorandum of appeal.

The advocates further submitted that, the judgment and decree were supplied on 6th April, 2020 and this application was filed in court on 18th February, 2021 after elapsed of 318 days of which the applicant did not account for. Fortifying the argument, the Advocates for the respondent referred this court to the landmark case of **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women's Christian Association**, Civil Application No. 2 of 2010 (unreported) and reminded the court that, failure to account the delayed days disentitles the applicant extension of time.

Rejoining, Mr. Maeda maintained his position that, the delay was not the applicant's fault but that of the court for not supplying necessary documents on time. The issue here, is whether the applicant has shown good cause to entitle him for extension of time?

I am aware that according to the case of **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women's Christian Association** (supra) and so many others authorities, the applicant need account for each day of delay in order to be entitled for extension of time to file an appeal out of time to challenge the decision of the trial court. However, the requirement relates to actual delay as opposed with technical delay.

Meanwhile, the clear distinction must be made in those applications which involve actual delay and technical delay. However, it must be bone in mind that, reasons creating good and sufficient cause to warrant extension of time are not exhaustive, they depend on the nature of the matter under scrutiny upon which the discretion of the court can be judiciously invoked without prejudicing either party to the application. In the case of **Regional Manager, TAN ROADS Kagera versus Ruaha 8 Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported), the court observed that extension of time being a matter

within the discretion of the Court, cannot be laid down by any hard and fast rules but will be determined by reference to all the circumstances of each particular case.

It is apparent that, section 19(2) of the Law of Limitation Act, [Cap. 89 RE 2019] requires the court while computing time within which the person aggrieved by the decision should file an appeal, to exclude days within which the appellant obtains the documents necessary for appeal purpose where the said document should mandatorily be annexed with the memorandum or petition of appeal as the case may be.

Going through the submission and affidavit of Mr. Maeda and of course the fact which was not agreed and or rebutted by the respondent's Advocates in their submission despite omnibus rebuttal in counter affidavit, the decree issued on 22nd September, 2020 was defective for variance of the date of the decree to that of the judgment. The record also shows that the rectified decree was also supplied in time. This is proved by the reminder letters from Mr. Maeda to the trial court requesting the said rectified decree. Unfortunately, the respondent's Advocates did not address this aspect in their submission in their submission.

The last reminder letter was written to the trial court on 05th January, 2021 and it was received in court on 6th January, 2021. After that, records are silent on what transpired therefrom.

Looking at the record, the judgment was certified on 6th July, 2020 while the defective decree was issued on 22 September 2020. This defeats the arguments by the counsel for the respondent that the decree was supplied to the parties on 6th April, 202. As it defeats logic and reasons for the judgment which was certified by the trial magistrate on 6th July, 2020 and the defective decree issued on 22nd September, 2020 be supplied to parties on 6th April, 2020. I agree that, to be true it means those documents were supplied to the parties without being certified and or prepared respectively, the position I am not convinced to take.

As it has already been made clear, that according to section 19(2) of the Law of Limitation act (supra) the time is computed from the date when the necessary documents for appeal purpose (judgment and decree) are certified and ready for collection. See the Court of Appeal stance in **Alex Senkoro and 3 Others V. Eliambuya Lymo 4 (administrator of the estate of Frederick Lymo, the deceased);** Civil Appeal No. 16 of 2017 (CAT) (DSM) (unreported).

In this regard, the impugned judgment on 06th July, 2020 when it was certified by the trial magistrate and the decree on the date when the rectified one will be issued. That being the standing of the law, denying the applicant extension of time is worse justly than granting it.

In the premises therefore, it enjoins me to find and hold that the applicant has brought good cause for her delay to warrant this Court to exercise its discretion to enlarge time as prayed. As this suffices to dispose of this application, I do not see any point of considering the question of illegality and irregularities pointed out by Mr. Maeda, for, its determination will not change the outcome of this application. This application is meritorious. I allow it and order that the applicant should file the appeal within twenty-one (21) days of pronouncement of this ruling. Costs of and incidental to this application shall follow event.

It is accordingly ordered.

DATED at ARUSHA on 22th day of August 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE.