

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

AT MUSOMA

MISC. CIVIL APPLICATION NO. 3 OF 2022

(Originating from Civil Appeal No. 36/2021 in the District Court of Musoma at Musoma)

BETWEEN

NYANSAHO CO. LTD..... APPLICANT

VERSUS

ANDREA FRANCISCO YOHANA.....RESPONDENT

RULING

28th & 28th April, 2022.

A. A. MBAGWA, J.

This is an application for extension of time within which to file an appeal against the decision of the District Court of Musoma in Civil Appeal No.36 of 2021. The application is made under section 25(1)(b) of the Magistrates Courts Act by way of chamber summons and it is supported by an affidavit deponed by Mwita Wambura Magoto.

The background leading to the present application may briefly be narrated as follows; The appellant, Nyansaho CO. LTD sued the respondent, Andrea Francisco Yohana in the Primary Court of Musoma Urban for recovery of the loan amount to the tune of Tanzanian shillings three million (3,000,000/=).

Upon hearing the parties, the trial Court (B.P. KAJIRU-RM) adjudged the case in favour of the applicant.

The respondent was aggrieved by the decision hence he appealed to the District Court of Musoma via Civil Appeal No. 36 of 2021. The appellate Court allowed the appeal and set aside the trial Court judgment.

It appears the applicant was not amused by the findings of the appellate Court hence he is determined to challenge it. However, he failed to institute the appeal within the prescribed time hence the present application.

The deponent, in the supporting affidavit, states that he is a Managing Director of the applicant who deals with legal issues. He states that the judgment sought to be impugned was delivered on 5th January, 2022 but the applicant failed to have the appeal filed within a period of thirty days because of sickness. The deponent states that the appeal was supposed to be filed on or before 4th February, 2022 but on 3rd February, 2022 he accidentally fell down and his leg got injured hence went to Musoma Government Referral Hospital for treatment. The deponent further avers that following his injuries, he was excused from duties from 3rd February to 4th March, 2022. As such, when he recovered and resumed his duties, the time had lapsed.

When the matter was called on for hearing, the applicant was represented by Noah Mwakisisile, learned advocate whereas the respondent was advocated by Tumaini Kigombe and Lilian Makene, learned counsels.

At the very outset Mr. Mwakisisile prayed for and was granted leave to adopt the accompanying affidavit and make it part of the submission.

Submitting in support of the application, the applicant's counsel said that the District Court decision was delivered on 5th January, 2022 and therefore the applicant was supposed to lodge the appeal within thirty days i.e. on or before 4th February, 2022. However, the applicant failed to comply due to reasons beyond his control.

He said that the law is clear that it is the discretion of the court to grant extension of time. He further submitted that in granting extension of time the court takes in to account various conditions as discussed in the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil application No. 2 of 2010 which was cited with approval in the case of **Alasai Josiah vs Lotus Valley LTD**, Civil Application No. 498/12 of 2019, CAT at Dar es Salaam at page 6.

The counsel expounded that, on 3rd February, 2022, the deponent accidentally fell down and his leg got injured thus he went to the hospital where upon medical examination, it was revealed that his joint range of movement had issues. Consequently, the doctor who attended him excused him from heavy duties from 3rd February, to 4th March, 2022. In support of the averment, Mr. Mwakisisile referred to the medical report which is attached to the applicant's affidavit. The applicant's counsel contended that due to the above incident, the applicant failed to lodge the appeal within time. He was thus opined that the applicant has sufficient cause for this court to grant extension of time for sickness is beyond human control. In addition, the counsel told the Court that grant of application will not prejudice the respondent in any how instead it is the applicant who will be prejudiced if the application is not granted. Lastly, Mwakisisile prayed each party to bear its own costs or else the costs to follow the event.

In contrast, Mr. Tumaini Kigombe resisted the application. Kigombe said that the application was without merits although the respondent did not file the counter affidavit due to late service. Kigombe beseeched the Court to go through the affidavit and find the application meritless. He prayed the matter to be dismissed with costs.

I have canvassed the contents of affidavit together with their annexures and the rival submissions by the parties.

It is common cause as submitted by Mr. Mwakisisile that grant of extension of time is the discretionary power of the Court. However, this discretion is exercised upon demonstration of sufficient cause. Unfortunately, there is no a decisive definition of what a sufficient cause is. As such, the Courts have been taking into consideration various factors to rule that a sufficient cause has been established. The factors include; length of delay involved, reasons for delay, the degree of prejudice if any, that each party is likely to suffer, the conduct of the parties, whether the applicant was diligent, the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal and the overall importance of complying with prescribed time lines. See **Jaliya Felix Rutihwa vs Kalokola Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited V. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam, **Ludger Bernard Nyoni Versus National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam and

Alasai Josiah vs Lotus Valley LTD, Civil Application No. 498/12 of 2019, CAT at Dar es Salaam at page 6 .

The applicant, in the supporting affidavit, states that the reason for delay is that the Managing Director fell down and got injured on 3rd February, 2022 and consequently he was excused from duties up to 4th day of March, 2022. However, according to medical report, the deponent was allowed to do some light works which, in my view, include pursuing the appeal.

Further, I have glanced at the judgment copy which is attached to the affidavit and observed that when the judgment was delivered the applicant's counsel one Vicky Mbunde was in attendance. It is inconceivable why the applicant failed to take the appropriate steps to lodge the appeal given that he had the services of advocate.

It should be noted that parties are bound to observe limitation of time set by law and whoever seeks an excuse should really demonstrate sufficient reasons including establishing that delay was not due to his own negligence.

Having appraised the applicant's affidavit and upon considering the circumstances of this case, I am inclined to hold that the applicant was

negligent. As such, the applicant has failed to establish sufficient cause for this Court to grant extension.

In the upshot, I find this application devoid of merit. Accordingly, I dismiss it with costs.

It is so ordered

Right of appeal is explained.

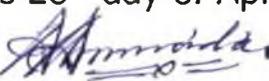



A. A. Mbagwa

JUDGE

28/04/2022

Court: Ruling has been delivered in the presence of Noah Mwakisisile, applicant's counsel, on the one side and Tumaini Kigombe and Lilian for the respondent, on the other side this 28th day of April, 2022


A. A. Mbagwa

JUDGE

28/04/2022