

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISCELLANEOUS CIVIL APPLICATION NO.24 OF 2021**

*(Arising from Newala District Court at Newala in Civil Appeal No.6 of 2020 and originating from Mkunya Primary Court in Civil Case No.1 of 2020)*

**ISSA SELEMANI MWANGA.....APPLICANT**

**VERSUS**

**HAMISI MEGA.....RESPONDENT**

**RULING**

*Date of Last Order: 22/2/2022*

*Date of Ruling: 06/5/2022*

**LALTAIKA, J.:**

By a Chamber Summons filed on the 20.8.2021, the applicant, Issa Selemani Mwanga, is seeking under Section 14 (1) of the Law of Limitation, [Cap.89 R.E. 2019], an order of this court to extend time within which to file an appeal out of time. The application is supported by an affidavit of the applicant affirmed on 16<sup>th</sup> day of August, 2021.

In order to appreciate the essence of the application, I take the liberty to reproduce in extenso some paragraphs of the affidavit of the applicant covering the reasons for his delay to lodge his appeal on the prescribed time. The applicant's affidavit in support. It reads: –

"4. That, still aggrieved the Applicant filed Misc. Civil application No. 4 of 2021 at the High Court of Tanzania Mtwara Registry for extension of time to appeal out of time which application was withdrawn by the

Applicant for technical reasons due to the fact that, the Applicant realized that the application was incompetent as both the Applicant and Respondent were affirmed before the same advocate hence unattainable in law.

5. That, I was late to file the appeal on time due to the fact that I was nursing my own son one Abubakari Issa Mwanga who fell sick on 24.11.2020 until 30.1.2021 when he recovered.
6. That, I was the only person to look after and attend my son at Kitengule Hospital in Dar es Salaam hence, I couldn't managed (sic) to leave my own blood son crying on the bed and run to Mtwara to file an appeal timely.
7. That, it was imperative for me to remain in Dar es Salaam to look after my son because I had to take him to and from the Hospital until he recovered.
8. That the impugned decision is tainted with illegalities on the ground that, the Respondent had no locus standi to sue because the alleged money is not his own property but belongs to the "Group" whereof, the only way to remedy these anomalies is by way of appeal hence this application."

The application was vehemently opposed by the respondent vide his counter affidavit filed in this court on 27/10/2021.

When the application was called on for hearing the applicant as well as the respondent, both appeared in person and unrepresented. The hearing commenced by the submission from the applicant. In his submission the applicant gave a brief background of the matter. Thereafter, the applicant argued that the intended impugn judgment was delivered on 23/11/2020 and got a copy the same on 10/12/2021. Meanwhile, the applicant got information about the sickness of his child.

In reply, the respondent took the same way of briefing this court on the genesis of the matter. But that has less significance to the present application. As to the submission of opposing the application, the respondent argued that the applicant brought attention to this court that the affidavits were attested by the same lawyer thus, he withdrew his application. Besides, the respondent stressed that the applicant has brought this matter on the same case number. More over, the respondent maintained that the grounds of appeal have no merits. Also, the applicant argued that the applicant is making him hard to meet the costs of attending the matter. To that end, the respondent invited this court to take a keen interest on the matter.

In a very short rejoinder, the applicant maintained that he was taking care of his child. He further stressed that there is no one who would not have taken care the child when it comes to issues of sickness since it the group that owes him.

I have perused the applicant's application, affidavit in reply and submissions of both parties. The principles that will apply in consideration of this application were well laid down by the Court of Appeal in the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 which reads: -

"On the authorities however, the following guidelines may be formulated: -

- (a) The applicant must account for all the period of delay
- (b) The delay should not be inordinate
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that intends to take.
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

The issue before this court, is whether the applicant has disclosed a good cause for extension of time for this court to exercise its discretionary power vested under Section 14 (1) of the Law of Limitation. Before I go a bit far to look for the merits of this application, it is crucial to find out what amount to a "good cause" or "sufficient cause".

The concepts of good and sufficient cause have been considered to have similar meaning as it was expounded in the case of **Republic vs Aidan Chale** (Criminal Appeal 130 of 2003) [2004] TZCA 28. Moreover, in **Republic vs Aidan Chale** (supra) the Court went outside our jurisdiction to borrow a leaf of the meaning of the phrase "good cause" or "sufficient cause". In so doing, the Court quoted a foreign case with approval as follows: -

"In **R v. Governor of Winchester Prison, ex p Roddie** [1991] 2 All ER 931 at page 934 Lloyd, L.J. said "good cause" will usually consist of some good reason why that which is sought should be granted. It does not have to be something exceptional. "To amount to "good cause" there must be some good reason for what is sought." It was considered that it was undesirable to define "good cause" and that it should be left to the good sense of the tribunal which has to decide whether or not good cause has been disclosed. We would accept that reason as correct in law."

Now, I need to ask myself whether the reasons averred and submitted by the applicant amounts to a good cause or sufficient cause as per requirement of section 14(1) of the Law of Limitation Act. Initially, the applicant vides his oral submission argued that on 23/11/2020 the first appellate court delivered its decision and the certified copies of the judgment was availed to him on 10/12/2021. Meanwhile, under paragraph 5 of the affidavit the applicant avers that was late to file the appeal on time due to the fact that he was nursing his son one Abubakari Issa Mwanga who fell sick on 24.11.2020 until 30.1.2021 when he recovered.

The applicant went further and argued as per paragraph 6 and 7 of his affidavit that he was the only person looking after his sick child at Kitengule

Hospital in Dar es Salaam until he recovered. Seeing that, I have decided to go through annexure "4" collectively especially the Outpatient Cash -Receipt Number 291564 dated on 27.12.2020, Outpatient Cash-Receipt Number 291611 dated 27.12.2020, Outpatient Cash Receipt Number 290453 dated on 29.12.2020.

According to these Outpatient Cash- Receipts, the applicant's son was brought to Kitengule Hospital on 27.12.2020 whereby the receipt indicates that Abubakar Issa Mwanga paid TZS.15,000/= for X-Ray on his forearm. Also, on the same day Abubakar Issa Mwanga paid TZS. 29,5000/= for purchasing P.O. P 7.5cm (POP), Diclofenac sodium 25mg/m and syringes 5cc. While on 29.12.2020 Abubakari Issa Mwanga paid TZS 7,500/= for consultation fee.

Surely, these three receipts do not bear the name of the applicant but that of Abubakari Issa Mwanga. If these receipts carried the name of the applicant, it would have added value to the assertion that he was in Dar es Salaam taking care of his sick son at Kitengule Hospital. The presence of the mere receipts do not convince this court that the applicant failed to lodge his appeal on time on the reason of looking for his son.

In addition, as per submission of the applicant, he received the certified copies on 10/12/2021 while the same was delivered on 23/11/2020. Therefore, by simple arithmetic calculation the first appellate court supplied the certified copies to the applicant promptly. In view of that fact, I expected the applicant to account for his delay from at least 23/12/2020 to the time for lodging his appeal lapsed on 23/12/2020.

That being the fact, the applicant ought to have accounted for his delay from 24/12/2020 to the date when he lodged his withdrawn application. In view of that observation, there are no explanations of delay as to the date before 27/12/2020 and after 29/12/2020 to 11/2/2021 when the applicant filed in this court Miscellaneous Civil Application No.4 of 2021.

I also expected the applicant to account for and give reasons for his delay from the date Miscellaneous Civil Application No.4 of 2021 was withdrawn (i.e., 15/7/2021) to the date when this application was filed in this registry on 20.8.2021.

The lacunae pointed above and lack of an account for each day of delay makes it hard for this court to believe that there is a sufficient or good reason to grant him an extension of time to appeal out of time. The annexures do not suggest how extreme the sickness of the applicant's son was to make it absolutely necessary that he stayed in Dar es Salaam for so long. In addition, the explanation by the applicant lacks accountability from the date the statutory time for lodging the appeal lapsed, the date his son went to Kitengule Hospital for consultation to the date the applicant filed the withdrawn application.

In the light of the above observation, the reasons advanced by the applicant are devoid of merits.

This brings me to the assertion that the impugned judgment is tainted with illegalities as the respondent had no *locus standi* to sue the applicant because the alleged money belonged to Tupendane Vicoba Group and not the respondent. In view of that alleged illegality, I took trouble to go through annexure "1" which is the judgment of the trial court. The said judgment had only one issue to determine namely whether the applicant was indebted to Tshs. 2,872,000/=. The court however was not clear with the phrase and it lacked consistency on the issue of indebtedness. Who owed who and how?

Without going to the details to avoid prejudging the intended appeal, I am convinced that the applicant has raised an issue of illegality with regards to the locus standi of the respondent. The Court of Appeal in the case of **Principal Secretary, Ministry of Defence and National Services vs Devram Valambhia** [1992] TLR 387 held that: -

"We think that where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of

sufficient importance to constitute "sufficient reason" within the meaning of rule 8 of the Rules for extending time...In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right."

In the light of the above observation and holding of the Court of Appeal, I am inclined to exercise my discretion of extending time to appeal out of the prescribed time to the applicant against the judgment of the lower courts. Thus, the applicant will be required to file his appeal within forty-five (45) days from the date of this ruling. Each party shall bear his own costs.

It so ordered.



**E.I. LALTAIKA**

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

**JUDGE**

**6.5.2022**