

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CIVIL APPLICATION NO. 20 OF 2022

(Originating from PC. Civil Appeal No. 19 of 2020 of the High Court of Tanzania at Mbeya)

ELIZABETH SETH KIMBIANAPPLICANT

VERSUS

SCOLA SAMWELI MAMBOLEO.....RESPONDENT

RULING

Date of last order: 12th December, 2022

Date of ruling: 7th February, 2023

NGUNYALE, J.

The applicant has filed this application for extension of time to file bill of cost in PC. Civil Appeal No. 19 of 2020, High Court of Tanzania at Mbeya. It is predicated under section 14(1) of the Law of Limitation Act [Cap 89 R: E 2002 now R: E 2019] and 95 of the Civil Procedure Code and any other enabling provision of the law, it is supported by the affidavit of the applicant. The application is resisted by the respondent who filed a counter affidavit.



Hearing of the application took the form of written submission. The respondent's submission is drawn and filled by Thomas Mathias learned advocate of MB Attorney. Dutifully both parties complied with the scheduling order.

In her submission, the applicant submitted that he was supposed to file bill of cost within sixty days after the delivery of judgment in 2021 but was prevented by economic constraints to do so. Amplifying, she submitted that she has used a lot of money drafting documents, stationaries, fare costs, food allowance consumed all his money rendering her to poverty. She restated the honoured principle of law that extension of time can only be granted upon advancing good cause by citing the case of **Republic vs Yona Kaponda & 9 Others** [1985] TLR 84 and was convinced that economic slump and poverty she was facing was a sufficient cause. According to her, she was not negligent in pursuing bill of cost but the delay was due to economic difficulties. As expected, the applicant submitted that she stands to suffer irreparable loss as she will be unable to pay debts incurred should the application be refused.

Mr. Mathias was very brief, he submitted that economic problem has never been a sufficient reason in application for extension of time. The case of **Fatma Mohamed Chamwenyewe vs Salum Mkoga & Another**, Misc. Land Application No. 310 of 2020 in which the case of

Wambele Mtimwa Shahame vs Mohamed Hamis, Civil Reference No. 8 of 2016 were cited in support of the contention that financial constraints is not a sufficient ground for extension of time. He added that the applicant has not accounted for each day of delay.

Mr. Mathias complained that the applicant had attached documentary evidence to submission which was discouraged in the case of **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Ltd v. Mbeya Cement Company Ltd and National Insurance Corporation (T) Limited** [2005] TLR 41 to support the argument.

During rejoinder the applicant submitted to have met all conditions which were discussed in the prominent case of **Lyamuya Construction Company Limited vs Board of Trustees of Young Women Christian**, Civil Application No. 2 of 2010, hence entitled to extension of time. She added that there is no hard and fast rule on what amount to sufficient cause, financial difficult can be good cause if sufficient and plausible explanation is given.

I have careful considered the application and rival submissions, indeed in an application for extension of time under section 14(1) of the Law of Limitation Act cap 89 [R: E 2019] the law is well settled that good cause is a pre-condition to prompt the Court to exercise its discretionary powers.

As to what constitute good cause, various factors have to be considered including **one**, to account for all the period of delay which should not be inordinate; **two**, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and, **three**, the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged. See the case of **Lyamuya Construction Company Limited** (Supra), also cited by the applicant.

In her affidavit under paragraph 6, 7, 8, 9, 10, 11, 12, and 14 the applicant has pleaded economic constraints as being the reason for her failure to lodge bill of costs within sixty days. The issue is whether economic constraints is a good and sufficient cause. The applicant was in support of the issue of economic constraints, she cited the cases which in my view I think are irrelevant to the issue tabled. The respondent had a different view, she submitted that economic constraints has never been good cause in an application for extension of time.

From the arguments above, it has to be appreciated that there is no definition as to what amount to good or sufficient cause, all depends on circumstances of each case. As to whether economic hardship is a good cause the Court of Appeal had occasion to discuss it in **Yusufu Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 2002 (unreported).

The court stated that

*'We are aware that financial constraint/is not sufficient ground for extension of time. See **Zabitis Kawuka v. Abdul Karim** (EACA) Civil Appeal No. 18 of 1937. But in the circumstances of this case at hand, where the respondent was a widow, depending on legal aid, her plea of financial constraint cannot be held to be insignificant.'*

[See also: **Costantine Victor John vs Muhimbili National Hospital**, Civil Application No. 214/18 of 2020, CAT at Dar es salaam (Unreported)].

As a general rule, financial constraints is not a sufficient cause for extension of time, all it depends with circumstance of each case.

The situation is very different in this case, the applicant all along from the primary court to this court has been prosecuting the case on his own and employing advocates to represent and draft the documents. For instance, in PC. Civil Appeal No. 19 of 2020 subject of this application which is pleaded under paragraph 3 of the affidavit, the applicant was represented by Iman Mbwiga, learned advocate showing that she was economically capable. In the affidavit the applicant has not given scintilla of evidence as to when he started to face economic problems. She has not explained why initially he was able to employ and pay advocate and what went wrong. There are a lot of questions than answers, in circumstance of this case the applicant has failed to plea exceptional circumstances for this court to depart from the general rule that financial constraint is not a good cause in an application for extension of time. See **Wambele Mtimwa**

Shahame vs Mohamed Hamis, Civil Reference No. 8 of 2016
(Unreported).

Regarding accounting each day of delay, the applicant in her affidavit or submission has not attempted to account. The applicant having delayed for almost ten months this is too ordinate to be condoned.

Having discussed above I am settled in my mind that the applicant has not been able to convince the Court to apply economic constraint in extending time including accounting for each day of the delay. In view of the foregoing, I find the application for extension of time devoid of merit. It is accordingly dismissed with costs.

DATED at MBEYA this 7th day of February, 2023




D.P. Ngunyale
Judge

Ruling delivered this 7th day of February 2023 in presence of the applicant in person and the respondent represented by Stanslaus Michael learned Counsel.


D. P. Ngunyale
Judge