

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 320 OF 2022

(Arising from Misc. Civil Application No.164 of 2020, from the District Court of Temeke at Temeke, a decision by Mpesa, R.M dated 20th May,2021 and probate Cause No. 66 of 1991 by Temeke Primary Court)

IBRAHIM MRISHO BOMBOMA..... APPLICANT

VERSUS

**SAAD SALIM MWITANGA (Administrator of the
estate of the late Zubeda Abdul.....RESPONDENT**

EXPATRE RULING

Date of last Order: 23/02/2023

Date of Ruling: 17/03/2023

E.E. KAKOLAKI, J.

The applicant herein has moved this Court pursuant to section 14 (1) of the Law of Limitation Act, [.Cap 89 R. E 2019] (the LLA), for an order of extension of time within which to appeal to this Court out of time against the decision of the District Court of Temeke at Temeke in Misc. Civil application No. 164 of 2020, dated 20th May, 2021. In support of the application is the applicant's affidavit which in essence advances two reasons as to why this application should be granted. Firstly he says that, copies of the ruling and

drawn order were lately obtained after the time for filing an appeal had lapsed and secondly, illegality of the decision sought to be impugned.

The application is not opposed as the respondent despite being dully served, did not attend in court to defendant it thus on 13/10/2022, an order was made for the hearing to proceed ex-parte against him. Hearing took the form of written submission in which the applicant was represented by Mr. Faraji Ahmed, learned advocate who prepared the submission.

Briefly as alluded to above, the decision sought to be challenged is in respect of Misc. Civil Application No. 124 of 2020, handed down on 20/05/2021, in which the applicant was seeking for extension of time within which to file an application for revision against the decision in Probate Cause No. 66 of 1991, the application which was dismissed for want of merit. Unhappy with the decision, the applicant on the same date filed in Court a letter requesting for supply of the copies of ruling and drawn order which allegedly were supplied to him lately. To remedy the situation, the applicant preferred the present application.

In his submission in support of the application Mr. Ahmed laid down and elaborated factual background of the matter and what bred the instant application. He then submitted that, the only issue to be determined by this

Court is whether the applicant has demonstrated good cause as a justification for this court to extend him time. He cited some cases on what constitute good cause for the grant of extension of time.

Accounting for the delay it was his submission that, immediately after the decision in Misc. Civil Application No.164 of 2020, the applicant applied for the copies of the ruling and drawn order that were supplied to him in late hours. He took the view that, the delay in supply of said copies was a technical delay which to him, has been held by this Court and Court of Appeal to constitute sufficient ground to justify the delay. To buttress his position, the Court was referred to the case of **Fortunatus Masha Vs. William Shija and Another** [1997] TLR at page 154. He contended further that, the applicant has been diligently pursuing this matter and that, the delay is not inordinate. On that stance he referred the Court to the case of **Irene Temu Vs. Ngassa M.Dindi & Others**, Civil Application No.278 of 2017 (unreported).

On the ground of illegality despite of mentioning it in paragraph 12 of his affidavit without further particulars, the applicant never submitted on it, hence an inference is drawn that he has abandoned it. To that end this ruling will not consider the same.

I have taken time to examine and consider the evidence in the affidavit, and submission in support of this application. As it is demonstrated is the chamber summons, this application is brought under Section 14 (1) of LLA, in which this Court is crowned with discretion to extend time, the discretion which must be exercised judiciously upon **good cause** shown. There is a plethora of cases supporting that stance including the case of **Tanga Cement Company Limited vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 and **CRDB (1996) Limited Vs. George Kilindu**, Civil Appeal No. 162 of 2006 (both CAT -unreported) to mention few.

It is also settled law that, in demonstrating that good cause exists, each day of delay must also be accounted for by the applicant. See the cases of **Sebastian Ndaula Vs. Grace Rwamafa**, Civil Application No 4 of 2014 and **Tanzania Coffee Board Vs. Rombo Millers Ltd**, Civil Application No 13 of 2015 (both CAT-unreported), whereby in **Sebastian Ndaula** (supra) the Court of Appeal had this to say on the applicant's duty to account for the delayed days:

"...even a single day delay has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

Having that settled position of the law in mind, the issue here is whether in the present matter, applicant has demonstrated good or sufficient cause to warrant this Court grant him extension of time as prayed. As per record, the ruling sought to be appealed was delivered on 20/05/2021. As per item 21 Part III of the LLA, time prescribed for making an application under the Magistrates Courts' Act for which no time limitation is provided is sixty (60) days. In this matter since the decision sought to be impugned was issued on 21/05/2021, then the applicant was supposed to file his appeal on or before 20/07/2021. The application having been filed on 3rd July, 2022, the applicant was late for not less than 340 days in which he has to account for.

As above stated, the applicant has advanced the reason of being supplied late with the copies of ruling and drawn order necessary for filling this application, which Mr. Ahmed, terms it as technical delay. With due respect to Mr. Ahmed, delay in supply of copies of necessary document for appeal purposes can never be a technical delay as deliberated in the case of **Fortunatus Masha** (supra), as it was held in that case that, technical delay comes in where the appeal or application filed in court timely is found to be incompetent for any cause and the appellant or applicant is penalized already by striking it out, which cause if remedied and the application for extension

of time is re-filed, then that reason amounts to technical delay. A situation in this matter is far different to entitle the applicant to rely on that ground of technical delay for want of evidence put forward by him exhibiting to this Court that, the he timely filed the appeal at first, but same was struck out on incompetence basis, before the present application for extension of time within which to file the said appeal, is brought. I therefore discount that line of argument instead, I find it apposite to consider the ground of delay in supply of the requisite copies of ruling and drawn order for appeal purposes, the delay which if proved the remedy is to exclude such number of days spent while awaiting for the supply of said copies of such necessary documents as provided under section 19(2) of the LLA. Section 19(2) of the LLA reads:

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

In the present matter, as alluded to above the applicant in paragraph 8 of his affidavit averred that, on 20/05/2021 he applied for copies of ruling and drawn order for appeal purposes, but the same were supplied to him out of

time. He however failed to specify the date in which he received the said copies after delivery of the ruling on 20/05/2021, for this Court to be able to count the delayed period hence exclude it from 340 delayed days, in which the applicant is to account for. As the time spent by the applicant while awaiting for the said copies of ruling and drawn order is not disclosed, I hold the applicant has failed to account for each day of delay as required by the law. Even if that time was to be specified, still I would hold no good cause has been shown, as the requested copies of ruling and drawn order in that letter were not meant for the decision subject of this application. The reason I am so holding is simple to catch, as conspicuously seen from the said letter dated 20/05/2021 that, the applicant requested for the copy of judgment dated 19/05/2021 in "Mirathi Na. 164 of 2021" (Probate Cause No. 164 of 2021) and not the ruling and drawn order in Misc. Civil Application No. 164 of 2020, the subject of this application, as he would want this Court to believe. Thus the advanced ground is bound to fail.

On that note, I am convinced and therefore of the finding that the applicant has failed to supply this Court with good cause warranting grant him of the sought prayer.

Consequently, this application is destitute of merit hence is hereby dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 17th March, 2023.



E. E. KAKOLAKI

JUDGE

17/03/2023.

The Ruling has been delivered at Dar es Salaam today 17th day of March, 2023 before Hon. Joseph Luambano, Deputy Registrar of the High Court in the presence of the applicant in person and Ms. Tumaini Kisanga, Court clerk and in the absence of the respondent.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

17/03/2023.

