

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 338 OF 2022

DOMINA MICHAEL MUSHI..... APPLICANT

VERSUS

ANTHONIA CONSTANTINE.....RESPONDENT

**(Arising from the decision of the District Court of Kinondoni
at Kinondoni in Criminal Appeal No. 27 of 2021)**

RULING

8th March & 2nd May 2023

KISANYA, J.:

This is an application for extension of time within which to lodge an appeal. It is preferred under section 14 (1) of the Law of Limitation Act Cap. 89 R.E. 2019 and supported by an affidavit deposed by the applicant, Domina Michael Mushi, on the 5th day of September, 2022.

According to the supporting affidavit, the decision subject to this application was delivered by the Kinondoni District Court in Criminal Appeal No. 27 of 2021 on 1st October, 2021. It is stated that, the applicant failed to lodge an appeal before this Court timely on the reason that she was seeking legal assistance. The applicant further deposed to have been devastated and psychologically tortured after delivery of the judgment. That, being a lay person, she went on looking for legal assistance until

when she was directed TAWLA. As the time within to appeal had already lapsed, the applicant filed the present application.

On the rival side, the respondent filed a counter-affidavit to contest the application. She stated, among others, that, the applicant had not demonstrated a sufficient cause for the application to be granted.

When the matter was scheduled for hearing the applicant prayed the matter be heard by way of written submission, while the respondent opposed the prayer stating that she had no means to engage a lawyer. For the interest of justice, the Court granted both prayers. Thus, the applicant filed the written submissions in support of her appeal while, the respondent was heard orally.

In her written submission, the applicant submitted that she delayed to file her appeal in time for the reason that, after the judgment she could not engage an advocate and hence was seeking for legal assistance. It was also stated that, in the process of seeking for legal assistance she was mugged on 01/01/2022 while she was on her way home from church. She stated that this incident made her to be devastated and psychologically tortured. She further contented that, being mentally affected by the judgment and the act of being mugged, she could not appeal in time.

In her reply, the Respondent prayed to adopt her counter affidavit to form part of her submission. She further expounded that, this application was filed one year from the date of impugned judgment. Contending that the applicant has not advanced good cause for extension of time, the respondent prayed for the court to dismiss the application with costs.

I have considered the application, affidavit, counter affidavit and submissions of the parties. It is settled law that applications of this nature is granted if the Court is satisfied that there is a reasonable or sufficient cause. The law is further settled that the court has discretion to grant or refuse the application for extension of time. However, such discretionary power must be exercised judiciously by addressing the issue, whether the applicant has advanced reasonable or sufficient cause. See for instance, the case of **Benedict Mumello vs Bank of Tanzania**, Civil Appeal No. 12 of 2012 (unreported), where the Court of Appeal held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".

What amounts to reasonable or sufficient cause has not been defined by the law. It is determined basing on the circumstances of each case and by considering the principles established in a number of cases. One of

them is 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 (03 October 2011), where the Court of Appeal listed the following principles:

- (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 he intends to take; and*
- (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 impugned judgment in the matter at hand was delivered on 01/10/2021. And pursuant to section 25(a) of the MCA, the applicant ought to have lodged her appeal within 30 days from the date of the impugned judgment. In that regard, the time within which to appeal lapsed on 31/10/2021. It is on the record that, this application was filed on 07/09/2021. This implies that the applicant was required to account for delay of ten (10) months and seven (7) days. This was not done at all. For instance, it is not known as to when the applicant recovered from the alleged devastation and psychological torture and when she consulted

TALWA for legal assistance. In the absence of the explanation, I hold the view that the period of delay has not been accounted. Considering further that the appeal was required to be lodged within thirty days, I find the period of the delay of ten months and seven days to be inordinate.

On the reasons for the delay, no evidence was produced to prove that the contention that the applicant was devastated and physiologically tortured after the impugned judgment. Furthermore, the applicant has averred that, she being a layperson in law, she was inclined to find for legal assistance. Such averment suggests that the applicant is pleading ignorance of law. The law is settled in this jurisdiction that, ignorance of the law does constitute sufficient cause for extension of time. This stance was stated by the Court of Appeal in the case of **Farida F. Mbarak and Another vs. Domina Kagaruki and 4 Others**, Civil Reference No. 14 of 2019 (unreported) where it was underlined that:

"The law was therefore not new and the applicant's contention that the law was not accessible or that there was confusion in what the law, as rightly found 13 by the learned single Justice, was nothing but a plea of ignorance of law which has never been accepted as a sufficient reason or good cause for extension of time."

Being guided by the above position of law, I hold that the applicant's averment that she is layperson is baseless. It cannot amount to sufficient cause for extension of time.

For the above stated reasons, I agree with the respondent that the applicant has neither accounted for each day of delay nor furnished a sufficient reason for the delay to warrant extension of time within to file the appeal.

Ultimately, the application is hereby by dismissed. As the matter arises from a criminal appeal, I make no order as to costs.

DATED at DAR ES SALAAM this 2nd day of May, 2023.



S.E. KISANYA
JUDGE