

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 534 OF 2022

(Originating from the decision of District Court of Temeke in Civil Case No. 33 of 2022
before Hon. N. MKADAM RM)

THEOPHIL JOHN SHAYO.....APPLICANT

VERSUS

ABDALLAH RASHID SALUM.....1ST RESPONDENT

DANI NZOGORO BAROSHA.....2ND RESPONDENT

INSURANCE GROUP OF TANZANIA LIMITED.....3RD RESPONDENT

RULING

Date of last order: 06/04/2023

Date of ruling: 12/05/2023

E.E. KAKOLAKI, J.

Before the Court is an application for extension of time within which to file appeal out of time against the decision of the District Court of Temeke in Civil Case No. 33 of 2022 dated 27/09/2022, cost and any other reliefs as this court may deem fit to grant. The application is preferred under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] (the LLA), sections 74(2), 93 and 95 of the Civil Procedure Code, [Cap. 33 R.E 2019], supported

by applicant's affidavit disclosing two grounds upon which this Court should be moved to grant the prayers sought. When served the respondents defaulted appearance in court despite of proof of service from the returned summons which was received in Court on 28/03/2023, hence an order for the hearing to proceed ex-parte against them.

Briefly as garnered from the affidavit in support of the application and the annexed ruling sought to be impugned, in Civil Case No. 33 of 2022 the applicant had sued the respondents jointly and severally for compensation of the sum of Tshs. 23182,000/- arising from damages of properties due to motor vehicle accident caused by the driver's negligence. It appears preliminary objections of points of law were picked against the applicant/plaintiff by the 1st and 2nd respondents on two grounds that, **one**, the suit was time barred and **two** that, the trial court was not crowned with the requisite pecuniary jurisdiction to try the matter and hearing of the same took the form of written submission. Scheduling orders for filing the submissions were entered in which the 1st and 2nd respondents were to file the submission in chief on 25/08/2022, reply to the submission in chief by the plaintiff and 3rd respondent on or before 08/09/2022 and the rejoinder on or before 15/09/2022. It is garnered from the affidavit that, despite the

fact that the applicant complied with court's order for filing his submission on 08/09/2022, the trial court proceeded to determine the said preliminary objection and struck out the suit in disregard of his submissions, the act which the applicant deposed constitute ground of illegality for being denied of his right to be heard.

It is also in his averment that, when the ruling of the Court was entered on 27/09/2022, applicant/plaintiff's advocate had travelled to Kigoma to render legal aid as per the attached letter from LHRC until 04/11/2022 and when he returned back to Dar es salaam travelled again to Bukoba to attend his father's funeral before he started making a follow up of the ruling 14/11/2022, as the applicant himself at all that time had travelled to Kilimanjaro where his family stays. Upon supplied with the copy of ruling and having found himself out of time to lodge his appeal this application was filed in Court on 21/11/2023.

Hearing of this application took the form of written submission and as alluded to above it proceeded ex-parte against the respondents. The applicant was represented by Mr. Frank Mposso, learned advocate, who filed the submissions in time. I have carefully gone through the said submission and accorded it with the deserving consideration. It is the law under section 14(1)

of the LLA that, this Court may for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or an application, upon good cause shown, either before or after the expiry of the period of limitation prescribed for such appeal or application. What amounts to good cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant. See the cases of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 and **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (both CAT-unreported). It is further settled law that, in accounting for the delayed period each and every day must be accounted for. See the cases of **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 (CAT-unreported), **Tanzania Coffee Board Vs. Rombo Millers Ltd**, Civil Application No 13 of 2015 and **Sebastian Ndaula Vs. Grace Rwamafa**, Civil Application No 4 of 2014 (both CAT-unreported). Apart from accounting for each day delayed, illegality of the decision if established is in itself sufficient to warrant extension of time. However it is not enough to

merely plead illegality as the same must be apparent on the face of record and not the one drawn from a very long argument or process. This position of the law is detailed in the cases of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Moto Matiko Mabanga Vs. Ophir Energy PLC and 2 Others**, Civil Application No. 463/01 of 2017 (all Unreported – CAT).

In the instant application as alluded to above and correctly submitted on by Mr. Mposso, the ruling sought to be impugned by the applicant was delivered on 27/09/2022 and this application filed on 21/11/2022, fifty five (55) days passed on the reason that, he was yet to be supplied with the requisite documents necessary for filing the appeal. The law provides under item 1 Part II of the schedule to the LLA that, the period of limitation for filing an appeal under the Civil Procedure Code where the same is not otherwise provided for by any written law is ninety (90) days from the date of the decision sought to be impugned. As it can be noted in this application, the applicant filed this application 35 days before expiry of 90 days provided by the law for the party to bring his appeal, undoubtedly acting on wrong belief that he was out of time since the same ought to be preferred within 30 days

from the date of ruling. No doubt he acted out of ignorance of the law which is not an excuse and good cause ground for extension of time as it was held in the case of **Hamimu Hamis Totoro @ Zungu Pablo and 2 Others Vs. R**, Criminal Application No. 121/07 of 2018 (CAT-unreported) when the Court observed thus:

"... the issue is whether ignorance of law constitutes a good cause for extension of time. There is a plethora of authorities to the effect that ignorance of law has never been a good cause for granting extension of time."

It is also the law that, the party preferring an application for extension of time to perform a certain action before expiry of the prescribed time limitation in alternative has to explain the reason as to what hindered or likely to prevent him from performing such action timely. In this application there is no such explanation from the applicant as to why 35 days were insufficient for him to file the appeal within time after collection of the requisite documents, before this application was preferred. In absence of such explanation and since 90 days have already lapsed since the date of the impugned ruling, I find there is no good cause shown by the application as to what caused him to delay in filing the appeal timely.

In another ground the applicant has pleaded illegality of the decision to be impugned submitting that, he was denied of his right to be heard after filing the reply submission timely as per the exchequer receipt annexed to the affidavit, the evidence which is uncontested. Since the applicant has managed to convince this Court that illegality is constituted by the trial court's failure to consider his filed reply submission to the submission in chief by the 1st and 2nd respondents, which fact is apparent on the face of record for denying him of the right to be heard, I find it is a sufficient ground warranting this court exercise its discretion to grant the application.

In the premises and acting on the ground of illegality of the decision sought to be impugned as adumbrated in the cases of **Lyamuya Construction Company Ltd** (supra) and **Moto Matiko Mabanga** (supra), I find merit in the application and proceed to allow the same. Time is therefore extended to the applicant for 14 days from today within which to appeal against the decision of the District Court of Temeke in Civil Case No. 33 of 2022.

Cost in the cause.

It is so ordered.

DATED at Dar es salaam this 12th May, 2023.

E. E. KAKOLAKI

JUDGE

12/05/2023.

The Ruling has been delivered at Dar es Salaam today 12th day of May, 2023 in the absence of both parties and in the presence of Ms. Asha Livanga, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

12/05/2023.

