

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA**

MISC. CIVIL APPLICATION NO. 129 OF 2022

(C/f Civil Appeal No. 8 of 2009 High Court of the United Republic of Tanzania at Arusha)

ABDALLAH SAIDI APPLICANT

VERSUS

MANAGING DIRECTOR ARUSHA INTERNATIONAL

CONFERENCE CENTRE RESPONDENT

ARUSHA INTERNATIONAL CONFERENCE CENTRE RESPONDENT

RULING

15th March & 5th May, 2023

TIGANGA, J.

In this application, Abdallah Said hereinafter the applicant, prays for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court, Mmilla, J. in Civil Appeal No. 8 of 2009 delivered on 1st June 2010. It is made by the chamber summons moving this court under section 11 (1) (c) of the **Appellate Jurisdiction Act**, Cap 141 R.E. 2019 (AJA) and supported by the applicant's sworn affidavit.

In his affidavit, the applicant deponed that, he had initially filed an appeal to the Court of Appeal of Tanzania which was registered as Civil Appeal No. 30 of 2016. However, the same was struck out due to the defects found on the record of appeal hence, the notice of appeal also

came to an end. He then filed Miscellaneous Civil Application No. 71 of 2018 for an extension of time within which to file a fresh Notice of Appeal and for leave to appeal to the Court of Appeal. That application did not succeed; it was struck out for being omnibus consequent of which, he filed another application, that Misc. Civil Application No. 98 of 2019 for extension of time to file, another Notice of Appeal to appeal to the Court of Appeal. The same was granted having given leave to file notice, he then was supposed to secure an extension of time to file the application for leave consequent of which he, filed Misc. Civil Application No. 69 of 2020 praying for extension of time to apply for leave to appeal to the Court of Appeal, the same was heard and granted.

However, even after he had secured the extension of time to apply for leave, he discovered some errors in the court order, thus, he addressed Deputy Registrar to seek correction. After the errors were successfully corrected, he applied for leave to appeal to appeal to the Court of Appeal which was registered as Misc. Civil Application No. 71 of 2021. That application was objected to by the respondent by filing two points of preliminary objections and the Court sustained the 1st point of objection that the affidavit was defective for being attested by an unqualified person and thus, the application was struck out with leave to

re-file within 30 days' computed from 31st March 2022. He was also ordered to join Arusha International Conference Centre as the 2nd Respondent in the interest of justice.

The applicant further deposed that, he filed another application for leave to appeal to the Court of Appeal which was registered as Misc. Civil Application No. 51 of 2022, however, it was once again struck out for being incompetent as he did not annex copies of the Judgment and Decree of the impugned decision i.e. Civil Appeal No. 8 of 2009. He therefore filed the current application praying that, this court grant him extension of time so that he can file proper application for leave to appeal to the Court of Appeal.

In this application, the applicant's affidavit was opposed by the respondents who filed their counter affidavits in which they noted most of the facts and disputed some of the facts, while putting the applicant to strict proof to the rest of the facts.

During the hearing of the application which was by way of written submission, the applicant appeared in person and unrepresented whereas the respondents were jointly represented by Ms. Juliana D. Mrema, Senior State Attorney.

Supporting the application, the applicant prayed for the court to adopt the affidavit to form part of this submission. He submitted that, section 11 (1) of AJA is silent on whether one has to give reasons for the delay. He further submitted that the power to grant an extension of time is discretionary as underscored in the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported) which held that,

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to the private opinion or arbitrarily."

He averred that, this Court should exercise its discretion to grant the extension of time since he has always acted diligently throughout the prosecution of his case despite many unfortunate events he encountered along the way after his initial appeal was successfully lodged and struck out for being incompetent. The appellant further averred that, he had to start the process of appeal afresh so that, he will be able to claim his rights. He also said that it was unfortunate that, when he finally filed his application for leave, he erred in failing to annex the copy of the impugned

Judgment which led to his application being struck out on 20th September, 2022. He submitted further that, it took him only seven days to file the current application which is a reasonable time for the preparing and filing process.

It was further the applicant's submission that, his delay in filing this application was due to protracted events which could not have been easily foreseen as the applicant is a layperson. However, his actions and tireless follow-up show that, the applicant has been diligent and not sloppy. He referred this court to the decision of the Court of Appeal in the case of **Robert Schelters vs. Mr, Baldev Norataram Varma and Two Others**, Civil Application No. 536/16 CAT at Dsm (unreported) where the court held *inter alia* thus;

*"... in **Osward Masatu Mwizarubi vs. Tanzania Fish Processing LTD**, Civil Application No. 13 of 2010, the Court held that: -*

*What constitutes **good cause cannot be laid down by any hard and fast rules. The term "good Causes" is a relative one and is dependent upon the party seeking extension of time to provide the relevant material to move the court to exercise its discretion.**" [Emphasis added].*

He lastly submitted that, he has shown sufficient cause considering the circumstance of what transpired while prosecuting his case and prayed that, the application be granted as prayed.

Opposing the application, Ms. Mrema prayed the respondents' counter affidavits to be adopted to form part of her submission and averred that, the applicant and the 2nd respondent were employees and employers respectively until 2008 when the former was terminated on the grounds of misconduct. He further submitted that parties have been litigating ever since to date. She asserted that, section 11 (1) of AJA does not order that one has to give reasons for the delay because the power to grant an extension of time is discretionary. Also, the applicant ought to know that, laws are read as a whole and not as one independent from another and that, although section 11 of AJA describes the requirement to apply for an extension of time, and give the High Court powers to grant should the time stipulated by law lapses and the applicant give reasons, the extension of time is generally governed by section 14 (1) of the **Law of Limitation Act** [CAP. 89 R.E. 2019].

The learned State Attorney further averred that, the applicant has not given sufficient reasons for the court to exercise its discretion to extend time. In his view, as the applicant has failed to give reasons, the

application cannot be granted and if his application is granted, then it will create a bad precedent, occasion a miscarriage of justice, and cause loss of precious time in this Court and the Court of Appeal. She argued that, for the application of time to be granted, the applicant must show that he has always acted punctually and promptly that is; the first application must be timely filed. However, the applicant has filed several applications for extension of time which exhibits his lack of promptness and punctuality as they have always been struck out for one reason or the other. Further to that, the applicant has failed to account for each day of delay including failure to show how many days he has been late to apply for leave before this Court as well as reason for such delays.

Supporting this contention, the learned State Attorney referred the court to several authorities including the case of **Adbul Swamadu Mohamed and 2 Others vs Dar es Salaam Water Supply and Sewerage Authority (DAWASA) (Disestablished) / Dar es Salaam Water Supply and Sanitation Authority (DAWASA) (Established)**, Misc. Labour Application No. 318 of 2021; **Mgeni Ally and Another vs Selemani Ally Hatibu**, Misc. Civil Application No. 86 of 2022; **Lyamuya Construction Limited Company Ltd (supra)** and the **Attorney General vs Mkongo Building and Civil Works and Another**, Civil

Application No. 266/16 of 2019 which all insisted on the importance of establishing sufficient grounds as well as accounting for each day of delay in applications for extension of time.

Ms. Mrema contended the fact that, there was no technical delay on the part of the applicant, she argued that, the applicant has rather shown a series of negligence, lack of diligence and or ignorance of law which cannot warrant extension of time. More so, according to the learned State Attorney, under his 25th paragraph of affidavit, the applicant stated that, there are crucial points that need the Court of Appeal's attention as seen in his annexed intended memorandum of appeal. But the same is not annexed hence, cannot rely on illegality as a ground for extension of time because the same must be apparent on the face of the record as well articulated in the case of **Mgeni Ally and Another** (supra). She in the end prayed that, this court to dismiss the application in its entirety with costs. There was no rejoinder.

Having gone through the parties' affidavits and submissions, the pertinent question for determination is whether this application for an extension of time is meritorious.

It is a trite principle that, an extension of time is purely discretionary in nature hence, it must be exercised judiciously and according to the

rules of reason and justice. It can only be exercised upon the court being furnished with good reasons or good cause by the applicant. See; **Benedict Mumello vs Bank of Tanzania**, Civil Appeal No 12 of 2012, C AT and **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha (all unreported).

More so, there is no universal definition of what constitutes a good cause for purposes of extension of time. Several factors must be considered as held in the case of **Attorney General vs Tanzania Ports Authority & Another**, Civil Application No 87 of 2016 CAT (unreported). According to this case and many other Court of Appeal, decisions as the famous **Lyamuya Construction** (supra), relevant factors for consideration include; the duration of delay; whether the delay is inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged.

Applying the above principles in the application at hand, I would like to start with the issue of illegality. In the 28th paragraph of his affidavit, the applicant stated that, there are crucial points which he prayed the

Court of Appeal to pay attention to as seen in his memorandum of appeal annexed to the affidavit. However, the said memorandum was not attached to his affidavit hence, I will not consider it.

Coming to the reasons for the delay, from the outset, I wish to point out that, the applicant's delay was fairly ordinate. Following the ruling on the application for leave to appeal to the Court of Appeal being struck out by this Court, (B.K. Phillip, J.) on 20th September, 2022, he managed to obtain copies of such ruling and order on 23rd September, 2022 as deponed in paragraph 27 of his affidavit. He filed this application on 27th September, 2022 which was four days later. Such days were not accounted for.

Now, because, granting of an extension of time is discretionary, the applicant is unrepresented, has been in court corridors since the year 2003 pursuing his rights, and the hiccups that he had encountered in all these years, I am of the firm opinion that, four days which he has failed to account to be an ordinate delay and can reasonably and justly be pardoned. The fact that, for the whole period of almost 20 years since 2003 he has been pursuing his right, that proves that, he has not been negligent, or sloppy and has manifestly proved to be diligent in the prosecution of his right.

For the reasons stated hereinabove, I find this application to be of merit and proceed to grant the applicant 14 days within which to apply for leave to appeal to the Court of Appeal. Since this is by nature a labour matter, each party bears its costs.

It is so ordered.

DATED and delivered at **ARUSHA** this 5th day of May, 2023




J.C. TIGANGA
JUDGE