

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

MISC. CIVIL APPLICATION No. 77 of 2023

(Originating from HC Civil Appeal No. 33 of 2022, arising from Civil Case No. 17/2021 at the Resident Magistrates' Court of Mwanza)

FIRST ASSURANCE COMPANY LIMITED APPLICANT

VERSUS

JUMEME RURAL POWER SUPPLY COMPANY LTD 1ST RESPONDENT

REG AQUATECH FISH FARMING CONSULTANCY CO. LTD 2ND RESPONDENT

RULING

19/7/2023 & 8/9/2023

ROBERT, J:-

The applicant, First Assurance Company Limited, has filed an application seeking an extension of time to apply for leave to appeal to the Court of Appeal against the judgment of this Court in Civil Case No. 33 of 2022 delivered on 27th September, 2022. The application is supported by an affidavit affirmed by Saumu Sekulu, Principal Officer of the applicant.

The applicant was aggrieved by the decision of this Court in Civil Appeal No. 33 of 2022 delivered on 27th September, 2022, and seeks to appeal it to the Court of Appeal. However, the applicant missed the prescribed time

for lodging an appeal to the Court of Appeal and has now applied for an order for an extension of time to file the appeal.

The applicant was represented by Regina Herman, learned counsel, during the hearing of this application. The first respondent, Jumeme Rural Power Supply Company Limited, was represented by Mr. Davis Muzahula, learned counsel. The second respondent, Keg Acquatech Fish Farming Consultancy Company Limited, did not file a counter-affidavit or enter an appearance despite being duly served, and the case proceeded ex-parte against them.

In support of the application for an extension of time, Ms. Herman argued that, for an extension of time to be granted, the Court should consider the principles outlined in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of the Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010.

On the requirement that the Applicant must account for each day of the delay, Ms. Herman submitted a timeline of events. She stated that the judgment in question was delivered on 27/9/2022. The applicant filed a

Notice of appeal accompanied by a letter requesting a copy of the judgment and decree on 13th October, 2022. This was followed by reminders on 20/11/2022 and 5/12/2022, and the applicant received a copy of the judgment. The applicant filed an application for leave to appeal to the Court of Appeal on 29/12/2022, which was struck out on 22/3/2023 due to incorrect citation of the enabling provision. On 24/3/2023, the applicant applied for a copy of the Ruling and drawn order and received a copy on 5/6/2023. Subsequently, the present application was filed on 14/6/2023. Ms. Herman argued that the delay should be considered technical, not actual, as the applicant had consistently been in Court Corridors attempting to seek leave to appeal to the Court of Appeal. She cited the case of **Amani Girls Home vs Isack Charles Kanela**, Civil Application No. 325/08 of 2019 to support this argument.

On the issue of the delay not being inordinate, Ms. Herman contended that the applicant was only late by 9 days from 5/6/2023 to 14/6/2023, which should not be considered inordinate given that the applicant was actively pursuing his right.

Ms. Herman argued that there were issues of jurisdiction in the impugned judgment. She asserted that the Resident Magistrates' Court did

not have pecuniary jurisdiction to hear the matter as it was of a commercial nature under section 2, read together with section 40(3)(b) of the Magistrates Courts' Act. She cited the case of **NBC Ltd vs Maisha Mussa Uledi**, Civil Appeal No. 501 of 2022 in support of this argument. Furthermore, she pointed out that the Resident Magistrates' Court overlooked the requirement of section 147 of the Companies Act, which mandates the attachment of a Board of Directors' Resolution for a company to file a case in court. She referred to the cases of **Mantrac Tanzania Limited vs Raymond Costa**, Civil Appeal No. 90 of 2018, and **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015, to substantiate this argument.

In response, Mr. Muzahula, representing the first respondent, argued that for the applicant to be granted an extension of time under section 14(1) of the Law of Limitation Act and section 11(1) of the Appellate Jurisdiction Act, the applicant must establish sufficient cause for the delay. He pointed out that the applicant was late by 190 days. He contended that the applicant's first application was a misconception, as it sought certification on a point of law instead of applying for leave to appeal to the Court of Appeal. Mr. Muzahula emphasized that the applicant has not accounted for each day

of the delay from 22/3/2023 when the incompetent application was struck out until 15/6/2023 when the present application was filed. He argued that the applicant's claim that they were waiting for an order of this Court was not valid, as an order of this Court was not required to be attached to the application.

On the issue of illegality, Mr. Muzahula contended that this issue was not raised in the affidavit supporting the application but was argued from the bar. He further argued that the issue raised in paragraph 10 of the affidavit was speculative, as it claimed the judgment was delivered by an unauthorized officer and contained illegality. He referred to the case of **Esther Mathias Mwinuka vs Shyvola Charles Were**, Misc. Civil Application No. 171/2016, where this Court held that illegality should not be speculative but should be clear. Additionally, he cited the cases of **FINCA (T) Ltd & another vs Boniface Mwalukisa**, Civil Application, No. 589/12 of 2018, and **Johan Harald Christer Abrahsson vs Exim Bank (T) Ltd & 3 others**, Civil Application No. 224/16 of 2018, to support his position.

Mr. Muzahula argued that, regarding the issue of jurisdiction, the law does not grant exclusive jurisdiction to the commercial court in deciding

commercial cases. Therefore, he requested the Court to dismiss the application.

In her rejoinder, Ms. Herman reiterated that the question of illegality was clearly raised in paragraph 2 of the applicant's affidavit. She argued that the applicant had accounted for all the delays between 22/3/2023 to 16/6/2023 as stated in paragraphs 7, 8, and 9 of the affidavit. She prayed for the application to be allowed with costs.

The Court has carefully considered the arguments presented by both parties and the relevant case law. The key issues to be addressed are whether the applicant has established sufficient cause for the delay in filing the application for an extension of time and whether there are valid grounds for the extension.

With regards to sufficiency of cause for the delay, this Court finds that, the applicant's delay in filing the application for an extension of time is 190 days, which is a substantial period. However, the applicant has provided a timeline of events from the delivery of the judgment on 27/9/2022 to the filing of the present application on 14/6/2023. The applicant has argued that the delay should be considered technical, as they have consistently been in

Court Corridors attempting to seek leave to appeal to the Court of Appeal. The Court notes that the applicant has accounted for various steps taken to obtain copies of the judgment, the erroneous application that was struck out, and the subsequent request for a copy of the Ruling and drawn order.

In evaluating the sufficiency of cause for delay, the Court should consider whether the applicant acted diligently and whether there were circumstances beyond their control that contributed to the delay. The applicant's argument that they were actively pursuing their right and that the delay was due to technical issues in the previous application warrants consideration. Additionally, the case of **Amani Girls Home vs Isack Charles Kanela**, Civil Application No. 325/08 of 2019, cited by the applicant, supports the notion that delay can be considered technical rather than actual if the party was actively pursuing their rights.

Therefore, the Court finds that the applicant has provided a reasonable explanation for the delay and that the delay, in this case, should be considered technical rather than inordinate.

The applicant has also raised issues of illegality and jurisdiction in the impugned judgment. Specifically, the applicant contends that the Resident

Magistrates' Court did not have pecuniary jurisdiction to entertain the matter, and there was a failure to attach the Board of Directors' Resolution as required by the Companies Act.

While the first respondent argues that these issues were not adequately raised in the affidavit and were speculative, the Court observes that paragraph 2 of the applicant's affidavit did raise the issue of illegality. Furthermore, the applicant has cited relevant case law to support their arguments, including the case of **NBC Ltd vs Maisha Mussa Uledi**, Civil Appeal No. 501 of 2022, regarding jurisdiction, and the cases of **Mantrac Tanzania Limited vs Raymond Costa**, Civil Appeal No. 90 of 2018, and **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015, regarding the attachment of the Board of Directors' Resolution.

The Court acknowledges that the issue of illegality should not be speculative, and there must be a clear basis for alleging illegality. However, the applicant has provided specific legal arguments and cited relevant case law to support their contentions. Therefore, the Court finds that there is a prima facie case


for the alleged issues of illegality and jurisdiction which needs to be determined by the Court of Appeal.

In light of the above analysis, the Court finds that the applicant has established sufficient cause for the delay in filing the application for an extension of time. The delay is considered technical, and there are valid arguments regarding issues of illegality and jurisdiction in the impugned judgment.

Consequently, the application for an extension of time is hereby allowed, and the applicant is granted an extension of time to file an application for leave to appeal to the Court of Appeal within 14 days from the date of this order. Costs shall be in the cause.

It is so ordered.




K.N. ROBERT
JUDGE
8/9/2023