

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISC. CIVIL APPLICATION NO. 22 OF 2023**

(Arising from the decision of the District Court of Mbulu in Probate Cause No. 15 of 2022)

**LALE MATLE AWE .....APPLICANT**

**VERSUS**

**YUDA MATLE.....RESPONDENT**

**RULING**

13/9/2023 & 27/9/2023

**BARTHY, J.**

The applicant herein preferred the instant application under section 14(1) of the Law of Limitation Act [CAP 89 R.E 2019], (the Act) seeking for the following orders;

- 1. That, this honourable court be pleased to extend the time within which the applicant can lodge an appeal to this court out of time to challenge the proceedings, ruling and order of Probate Cause No. 15 of 2022 delivered by C.A. Chitanda on 7<sup>th</sup> September, 2022.*
- 2. Any other relief that this honourable court may deem*



*fit and equitable to grant.*

The application is supported by an affidavit sworn by the applicant herself. The respondent filed a counter affidavit to contest the application.

When the application was called on for hearing, Mr. Omary Gyunda learned advocate represented the applicant, while Mr. John Lailumbe learned advocate appeared for the respondent. The application was disposed of orally.

In his submission in support of the application, Mr. Gyunda first of all he adopted the affidavit in support of the application to be part of his submission. He went on arguing that, the applicant was not pleased with the decision of the trial court, he therefore lodged Civil Appeal No. 36 of 2022 within time before the High Court at Arusha, but it was struck out on 2/5/2023.

He further submitted that, after the said appeal was struck out, he applied for the copy of the ruling which was supplied to him on 16/6/2023 and he lodged the instant application on 22/6/2023.

It was his argument that, an extension of time is a discretion of court which can be exercised upon the applicant showing good cause. To



this, he cited the case of **Salim Lakhan & others v. Ishfaq Shabir Yusupally**, Civil Application No. 455 of 2019 (2020) [TZCA] 211.

Mr. Gyunda was firm there was only a technical delay, taking into account that the applicant's appeal was filed within time before it was struck out. To reinforcement his arguments, he referred to the case of **Bank M. (Tanzania) Limited v. Enock Mwakyusa**, Civil Application No. 520 of 2017 (2018) [TZCA] 291, where the Court of Appeal quoted with approval the case of **Fortunatus Marsha v. William Shija & another** [1997] TLR 154 where the court elaborated what constitutes technical delay and held that, it was sufficient reason for granting the extension of time.

The learned advocate insisted that, the applicant has accounted each day of the delay. He added that, soon as the applicant was supplied with the copy of the ruling on 16/6/2023, he prepared the instant application and filed it on 22/6/2022.

He submitted further that, the decision sought to be challenged is tainted with irregularities as the trial court did not follow the procedures in determining the caveat as provided under section 56 of the Probate and Administration of Estate Act and Rule 82 of the Probate Rules. He therefore urged the court to grant the prayers sought.



On reply submission, Mr. Lailumbe contended that the applicant has not advanced any sufficient reason to warrant this court to exercise its discretion to grant the extension of time.

He also contended that the issue of illegality has not been proved in the instant matter. He was of the view that, in order to establish illegality, the same must be apparent on the face of record. He argued that in the instant matter the illegality complained of can be determined after a long-drawn argument. Mr. Lulimbe referred to the case of **Ngao Godwin Loseo v. Julius Mwarabu**, Civil Application No. 10 of 2015.

On issue of technical delay Mr. Lulimbe was of the view that, in order for technical delay to stand as the ground for extension of time, the applicant must account for each day of the delay. He argued that in the instant matter, the applicant has not given an account on what transpired from the date Civil Appeal No. 36 of 2022 was determined to the date the instant application was lodged.

To prop his argument, he referred the case of **Airtel Tanzania Ltd v. Mister Light Installation and Electrical Co. & another**, Civil Application No. 37 of 2020 where the court pointed out that, even a single day delay has to be accounted for.



He further cited the case of Ramadhani Bakari & others v. Aga Khan Hospital, Civil Application No. 5 of 2022 Court of Appeal of Tanzania at Dar es Salaam (unreported) in which the court observed that, technical delay will not apply on the failure to account for each day of the delay.

He urged the court to dismiss the application with costs for lack of merits.

On rejoinder Mr. Gyunda essentially reiterated what he had submitted in his submission in chief.

Having gone through the parties' rival submission as well as the opposing affidavits in support of the application, the sole issue for my determination is whether the application has advanced sufficient good cause for this court to grant the application.

The instant application has been preferred under section 14(1) of the Act, which empowers court to grant the extension of time to lodge an appeal or application upon reasonable or sufficient cause being shown. The said provision provides that;

*Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause extend*



*the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application. [Emphasis added].*

From the foregoing provision of the law, the court can exercise its discretion for extension of time upon showing reasonable or sufficient cause.

In determining whether, sufficient cause has been established or not, there are number of factors that have to be taken into account depending with the circumstances of that particular case.

The Court has to consider if the applicant was diligent, reasons for the delay, the length of the delay, the degree of prejudice to the respondent if time is extended and whether there is a point of law or the illegality or otherwise of the impugned decision.

The factors were not developed in any provision of statute, however the court has lucidly pointed out in a number of its decisions, to mention just few see the cases of **Dar es salaam City Council v. Jayantilal P. Rajan**, Civil Application No. 27 of 1987, **Tanga Cement Co. v. Jumanne**

**Masangwa and another**, Civil Application No. 6 of 2001, **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Civil Applications Nos. 4 of 2009 and 9 of 2008.

See also cases of **Bertha Bwire v. Alex Maganga**, Civil Application No. 7 of 2016, **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016, **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (all unreported) to mention but few.

It is also the position of the law that, for the Court to extend time, each day of delay must be accounted for. See cases of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011 (both unreported). In the former case, the Court of Appeal stressed that:

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

Guided by the above factors, with respect to the instant matter; it is on record that the impugned decision was delivered on 7/9/2022 and the applicant lodged Civil Appeal No. 22 of 2022 at the High Court Arusha



Registry. It is also clear that, the said appeal was well filed within time, the fact which the learned advocate for the respondent does not contest.

After his appeal was struck out on 2/5/2023, the applicant applied for the copy of the ruling vide a letter dated 5/5/2023. The applicant maintained that he was supplied with the copy of the ruling on 16/6/2023 while the instant application was filed on 22/6/2023.

I have taken into account the reason advanced by the applicant in his affidavit and expounded by his advocate that there was a technical delay which was caused by the time spent in filing and prosecuting Civil Appeal No. 36 of 2022.

Led by the decision in the case of **Denis T. Mkasa v. Farida Hamza & another**, Civil Application No. 407 of 2020 Court of Appeal of Tanzania at Mtwara (unreported) the Court of Appeal held that;

*The law is settled that, technical delay constitutes sufficient cause for extension of time, if it is pleaded in the supporting affidavit and sufficient demonstrated by the applicant.*

Also, in the case of **Bank M. (Tanzania) Limited v. Enock Mwakyusa**, (supra) referred by Mr. Gyunda, the Court of Appeal held that a





prosecution of an incompetent appeal when made in good faith and without negligence, *ipso facto* constitutes sufficient cause for extension of time.

The similar stance was underscored in the case of **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (unreported).

Going through the affidavit in support of the application, particularly on paragraphs 3 and 4 where the applicant pointed out on technical delay. Indeed, there was an appeal lodged within a time, but it was struck out for being incompetence.

Having established that there was a technical delay caused by prosecuting Civil Appeal No. 36 of 2022, this calls for this court to address another question as to whether the applicant acted promptly in filing the instant application.

Rightly as argued by Mr. Lailumbe that technical delay goes with the requirement of accounting each day of the delay.

In the case of **Samwell Mussa Ng'omango (as a legal representative of the Estate of the late Masumbuko Mussa) v. A.I.C. (T) Ufundi**, Civil Appeal No. 26 of 2015 (unreported), the Court of Appeal having considered the circumstances of the case observed that;



*"In my firm view the applicant acted promptly and diligently having filed the present application in less than **20 days** since he obtained the certificate"*

[Emphasis added]

Also, in another case of **Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) v. Mtumwa Moshi (as the Administered of the Estate of the late Moshi Abdallah)**, Civil Application No. 407/17 of 2019 (unreported), the Court of Appeal considered a period less than 30 days to be reasonable time;

*"After the latter application was struck out; the applicant took **hardly a month** to file the present application seeking for extension of time to file an appeal. In other words, the applicant was diligent all along to file an appeal. [Emphasis added].*

In this matter, after the appeal had been struck out, the applicant applied for the copy of ruling through a letter and it was supplied to him on 16/6/2023. These facts have not been contested by Mr. Lailumbe. As the application was lodged in this court on 22/6/2023 just six (6) days after the application was supplied with the copy of the ruling.

I find that the applicant has acted promptly in filing the instant application. Consequently, I find that the applicant has advanced sufficient

reason for this court to grant the extension of time. I thus grant the applicant the period of 21 days from the date of this ruling to lodge his appeal. Taking into account the application stems from a probate matter, I will not make an order as to costs.

It is so ordered.

**Dated at Babati** this 27<sup>th</sup> September 2023.



A handwritten signature in blue ink, appearing to read "G. N. Barthy", is written over the printed name.

**G. N. BARTHY**

**JUDGE**

Delivered in the presence of Mr. Omary Gyunda the advocate for the applicant and the respondent in person.