

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. CIVIL APPLICATION NO. 51 OF 2022**

MWAJUMA ALLY YAMEE.....APPLICANT

VERSUS

VICTOR SHIKUSTRIE SWAI.....RESPONDENT

(Arising from the Order of The High Court of Dodoma)
dated the 21st day of April, 2022)

In

Pc. Civil Appeal No.12 of 2021

.....

RULING

Date of last Order: 31st October, 2023

Date of Ruling: 6th November, 2023

SARWATT, J.:

On 29th September 2022, the applicant filed this application for an extension of time for restoration of Civil Case Appeal No. 12 of 2021, dated 21st April 2022. The application was lodged under the provisions of Section 14 (1) of the Law of Limitation Act, Cap.89.

The applicant, on her chamber summons, prays for the following orders;

- (a) The Honorable Court be pleased to grant extension of time to file an application of restoration of appeal out of time in respect of dismissal order in Civil Case Appeal No. 12 of 2021 dated 21st April, 2022.*
- (b) Costs of this application to be provided for.*
- (c) Any other orders and relief this Honourable Court shall deem fit to grant.*

The application is supported by an affidavit of the applicant, **MWAJUMA ALLY YAMEE**, affirmed on 26th September 2022 and resisted by the counter affidavit filed by the respondent herein.

This application was heard on 31st October 2023, whereas the applicant, represented by Faraja Shayo, Learned Advocate, and the respondent appeared in person.

Supporting his application, Faraja Shayo, Learned Counsel for the applicant, prayed the applicant's affidavit be adopted and form part of her submissions. She then submitted that this is an application for an

extension of time under section 14 (1) of the Law of Limitation Act Cap.89 R. E 2019. He submitted the reason for the delay that the applicant was sick after she got into the motorcycle accident, and she was under treatment for all 36 months because she was advised to stay and not to do anything. He cited the case of **Hamis Macha Sancho v Joyce Bachubila, Civil Application No. 487/17/2016**, to support her point that the illness is one of the reasons the Court should grant the applicant for extension of time. Therefore, he prayed this Court to grant an extension of time for the applicant to file the application for restoration.

In reply, the respondent submitted that the medical report, which is an annexure to the applicant's affidavit, bears a different name. As in the said name, the medical report shows the name of Halima Bira Galai, aged 90 years. He added that the applicant stated that she was hospitalized in the General hospital, but there is no medical report from the said hospital concerning the accident she got. He prayed this application be dismissed.

In a brief rejoinder, the applicant's Counsel reiterated her submission in chief and added that, as to the said police inspection report to the applicant, there is no police report. He, therefore, insisted to this Court to extend time to file her application for restoration out of time.

I have carefully considered the chamber summons, affidavit in support, counter affidavit, rival submissions, cited authorities, and examined records of this case, I now proceed to determine whether there is a good cause for an extension of time in the applicant's application.

As to the discretionary power of this Court to extend time, the provisions of Section 14(1) of the Law of Limitation Act provide as hereunder;

"14. (1) 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. "

The provisions of the Law cited above mean that the Court may, for good and sufficient cause, extend the time to file an appeal or application. A number of decided cases laid down the guidelines that can be considered a good cause. To mention a few, see the case of **Benedict Mumello v. Bank of Tanzania, Civil Appeal No. 12 of 2002** Court of Appeal (Unreported); also, **Lyamuya Construction**

Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal (unreported), of which at page 6 of the ruling, it was held that:

"In exercising its discretion of whether or not to grant extension of time the Court is required to exercise it judicially while being guided by such factors which may not be exhaustive such as:

- 1. The applicant must account for all the period of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
- 4. If the Court feels that there are sufficient reasons such as existence of a point of Law of sufficient importance such as illegality of the decision ought to be challenged.*

In the instant application, the record bears that the order subject to this application was delivered on 21st April 2022, and this present application was lodged on 29th September 2022. Pursuant to Item 9, Part III of the Schedule to the Law of Limitation Act, the application for restoration of the appeal ought to be filed within thirty (30) days from the date of dismissal. Under this application, the time to file restoration elapsed on 28th October 2022 according to the time prescribed by the Law. The applicant was late for almost five months. According to the case of **Lyamuya (supra)**, the applicant should account for each day of delay. The issue here is whether the applicant complied with the requirement of the Law to account for each day of delay. In her affidavit in paragraphs 5 and 6, the applicant states the reason for the delay. Paragraphs 5 and 6 of the applicant's affidavit read as follows;

5. That, the applicant herein had got a motorcycle accident on 20th February, 2022 at Area C Njia Panda Dodoma and that she was unable to attend the Court for appeal hearing.

**6. That the applicant herein has being sick/
suffering injuries sustained at the back
born and the leg during the accident and
she was admitted at the hospital and
unable to move or do anything during
and after the accident and has been
attending medical treatment since then.
**Copy of the said medical report is
hereby attached and marked as
annexture Mwa-1 to form part of
this affidavit."****

Reading from the affidavit, in the said paragraphs, the applicant stated that on 20th February 2022, she had a Motorcycle accident. The order of the Court was pronounced on 21st April 2022. The applicant alleged that while preparing her application for restoration, she was sick and could not move to do anything after being advised by the Doctor.

In the case of **Alasai Josiah (suing by his Attorney Oscar Sawuka) v. Lotus Valley, Ltd, Civil Application No. 498/12 of 2019**(unreported), it was stated by the Court of Appeal that,

"Sickness is beyond human control and therefore nobody will fault the applicant for being sick".

However, in the case of **Sabena Technics Limited v Michael J. Luwungu, Civil Application No. 451 of 2020**, citing the case of **Juto Ally v Lukas Komba and Another, Civil Application No,484/17 of 2017** Court of Appeal (unreported) and stated that to amount to a good cause for the delay, there must be evidence that sickness had a bearing on the delay.

In the application at hand, I am of the view that the applicant failed to show good cause for delay. The mere allegation of sickness is not enough. The applicant must produce evidence. The applicant has attached to the affidavit a copy of the medical report from The hospital, but the said report shows the patient's name as HALIMA BIRA GALAI while before this Court, the applicant known as MWAJUMA ALLY YAMEE. This Court is aware that sickness is a good ground for an extension of time if proved by the evidence establishing not only that the applicant was sick but also that his sickness happened at a time when he is required by the Law to take action in respect of the matter which she seeks extension of time for. In my view, I find this ground to be wanting in terms of evidence because

sickness should not be presumed. It must be proved by documentary evidence. Indeed, the Law is clear that any applicant seeking an extension of time is required to account for each day of delay.

This position also was stated in the case of **Interchick Company Limited v Mwaitenda Ahobokile Michael, Civil Application No. 218 of 2016**, where the Court of Appeal cited the case of **Bushiri Hassan v Latifa Lukio Mashayo, Civil Application No. 3 of 2007** (unreported) which was held by the Court of Appeal 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."

Based on the above findings, I find the delay period is more than five months, which has not been accounted for by the applicant. For that reason, the applicant in this application has not shown any sufficient and reasonable cause for this Court to exercise its discretion power to extend time for restoration.

In the premises, I find no merits in this application, and is accordingly dismissed. Each party is to bear his own costs.

It is so ordered.



S. S. SARWATT

JUDGE

06/11/2023

DATED at DODOMA this 6th day of November, 2023.

S. S. SARWATT

JUDGE

06/11/2023

