

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 409 OF 2023

(Arising from the decision of the High Court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam in Civil Appeal No. 202 of 2018, Originating from the decision of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No. 133 of 2017)

BETWEEN

**NATIONAL INSURANCE CORPORATION OF
TANZANIA LIMITED.....APPLICANT**

Versus

SALUMU JUMA HAJI.....RESPONDENT

RULING

31st October & 07th November, 2023

CHUMA, J:

NATIONAL INSURANCE CORPORATION OF TANZANIA LIMITED (herein is referred as the applicant) being aggrieved by the decision of this Court in Civil Appeal No. 202 of 2018 which was determined on the respondent's favour intends to appeal to the Court of Appeal. However, in the instant application, the applicant is seeking for the following reliefs before knocking the door of the Court of Appeal:

- 1. That this Honourable court be pleased to extend the time for making an application for leave to appeal to the Court of Appeal.*
- 2. Costs of this application to be provided for.*

3. That, this Honourable Court be pleased to grant any other order it deem just and fit to grant.

The instant application has been brought by chamber summons made under **section 11 (1) of the Appellate Jurisdiction Act [Cap. 141 R.E 2019]**, supported by an affidavit sworn by Mr. Paul Shaidi, the Director of Legal Services of the applicant.

Basically, the applicant in his affidavit deposed that, she was the appellant against the respondent in Civil Appeal No. 202 of 2018. The decision delivered on 21/2/2020 in the respondent's favour since the said appeal was dismissed for want of merits. The applicant was dissatisfied by the said decision. Consequently, on 24/2/2020 the applicant lodged a letter to this court requesting to be availed with the necessary copies of the proceedings, judgment, decree for the purpose of lodging the intended appeal to the Court of Appeal. The letter to request the said documents is marked as NIC2. According to the applicant, on 3/3/2020 the notice of appeal to the Court of Appeal was lodged therein and later on the entire file was handled to the Office of the Solicitor General upon the directives issued by the Ministry of Finance who directed all the public institutions to submit the case files to the Solicitor General. The directives were received at the applicant's office on 23/5/2019 as per the letter marked as NIC 4. Again, on 4/5/2020 and 22/6/2020 the applicant wrote reminder letters to the High Court Registrar requesting to be supplied with the necessary documents which were originally requested for. This took for so long until in July, 2023 when the applicant alleged that, they had discovered that the intended application for leave was not initiated to the Court of Appeal. The Applicant

alleged that, the intended appeal aims among other things to challenge the decision of the trial court under the umbrella of the jurisdiction.

On the other hand, through the counter affidavit sworn by Ms. Joyce Sojo Mwangota learned Advocate on behalf of the respondent strongly opposed the application. Basically, Ms. Joyce alleged that what had been presented by the applicant in seeking the instant application aims at bringing confusion and misleading to the court since the directives to handle over the file to the solicitor general were issued in 2019 but the reminder letters were written in 2020 and 2021 respectively when Mr. Paul G, Shaidi had no jurisdiction to proceed with the matter. More so, the respondent alleged that, in 2021 the applicant had been appearing in the trial court for execution proceedings (Execution No. 21 of 2021). As to the alleged point of law as raised by the applicant, the respondent strongly opposed the existence of the same since the applicant has even failed to elaborate as on how the trial court had no jurisdiction to entertain the matter.

On 31/10/2023 when the application was called on for hearing, the applicant and respondent enjoyed the legal services of Mr. Christopher Bulendi and Ms. Joyce Sojo and Ms. Anna Amon learned Advocates respectively.

In his submission in support of the application, basically Mr. Christopher Bulendi narrated what had been stated in the affidavit. He further insisted that, failure to file the intended leave of appeal to the Court of Appeal was caused by the uncertainty of representation following the directives from the Ministry of Finance. Thus, according to him, the said

uncertainty amounted to sufficient ground for an extension of time since the applicant had promptly lodged the application on 3/8/2023. He further insisted that the trial court decision is subjected to point of law on jurisdiction and he referred the court to the case of **Mathias Eusebi Soka Versus The Registered Trustees of Mama Clementina Foundation and 2 Others, Civil Appeal No. 40 of 2001 (CAT-ARUSHA) (Unreported)** to support his stance. At the end, he concluded by praying the reliefs sought in the instant application.

On the other hand, basically Ms. Joyce Sojo opposed what had been submitted by Mr. Christopher. She was of the view that, there are no sufficient grounds to warrant the sought extension of time. She relied on the decision of **Jubilee Insurance Company (T) Limited Versus Mohamed Sameer Khan, Civil Application No. 439/01 of 2020 (CAT-DSM) (Unreported)** which directed that, the sought extension of time can be granted only if the applicant was diligent or otherwise; reasons for the delay and the length of the delay; whether there is a point of law or otherwise. Thus, she was of the view that, the reasons stated by the applicant do not fall within the legal requirements stated in the said cited decision. In the end, she prayed the application be dismissed with costs.

In his rejoinder, in its totality Mr. Christopher disagreed of what had been submitted by Ms. Joyce and instead he maintained the application at hand to have merit. He consequently urged the same be granted.

The issue here for determination is whether the applicant has advanced sufficient reasons to warrant this court grant the sought extension of time.

It is trite law that, an application for an extension of time can be granted where sufficient reasons have been advanced by the applicant. As to what amounts to sufficient reasons has been well elaborated in the case of **TANESCO VERSUS MUFUNGO LEONARD MAJURA AND 15 OTHERS, CIVIL APPLICATION NO. 94 OF 2016 (CAT-DSM) (UNREPORTED)** at page 10 where the court of Appeal of Tanzania cited with an approval the case of **Lyamuya Construction Company Ltd Versus Board of Trustees of Young Women's Christians Association of Tanzania, Civil Application No. 2 of 2010** where it was stated;

- a) The applicant must account for the delay for the period of the delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.***
- d) If the court feels that, there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged. [Emphasis is mine]*

See also; Jubilee Insurance Company (T) Limited Versus Mohamed Sameer Khan (supra)

Having in mind with the above legal position, now turning to the instant matter, the court records reveal that the decision of this Court sought to be challenged to the Court of Appeal in Civil Appeal No. 202 of 2018 delivered on 21/2/2020. The court records further reveal that, three days later (24/2/2020) the applicant lodged the letter to this Court requesting to be supplied with copies of proceedings, judgement and decree. Again, on 3/3/2020 the applicant lodged the Notice of Appeal to the Court of Appeal. However, from there the applicant remained silent until on 4/5/2020 and 22/6/2020 when the applicant wrote the two reminder letters for being supplied the necessary documents as requested earlier. More so, the instant application was lodged later on 3/8/2023. This is more than three years from the date when the last reminder letter was lodged.

Having considered the circumstances of the instant matter and upon the scrutiny of the entire court records, I find the applicant has not established the sufficient reasons for seeking the sought extension. The reason being that, despite the fact that, as indicated above in one point the applicant appeared to be more active in pursuing her right to challenge the decision of this court (Civil Appeal No. 202 of 2018). This is evidenced from the evidence of requesting the necessary documents on 24/2/2020, three days from the date of the decision as well as filing the notice of appeal on 3/3/2020 and later on lodged the reminder letters to request the necessary documents on 4/5/2020 and 22/6/2021. However, from 22/6/2021 till on 3/8/2023 (more than two years and a half) that is when the applicant came up by filing the instant application. **(See: Nada Panga Versus Asha Seif and 2 Others, Civil Application No. 312/12 of 2020 (CAT-TANGA))**

(Unreported) Be that as it may, in my settled view this amounts to sloppiness of the applicant to prosecute the intended appeal which is not a sufficient ground for seeking the extension. The applicant has not accounted each day of the delay from 22/6/2021 to 3/8/2023. The law is well settled on this account, as in the case of **Tanzania Bureau of Standards Versus Anitha Kaveva Maro, Civil Application No. 60/18 of 2017 (CAT-DSM) (UNREPORTED)** at page 10 where it was held and I quote;

*'... there was evidently a period of about forty days of inaction. I am mindful that it is the firmly entrenched position of this Court that **any applicant seeking extension of time is required to account for each day of delay***[Emphasis is mine]

See also: Bushiri Hassan Versus Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (Unreported)

As if not enough, the affidavit of the applicant as well as the submission of the counsel for the applicant indicates or suggest that, there was uncertainty of the office of the Solicitor General upon the file being handled thereat. However, this again is not a sufficient ground since the directives from the Ministry of Finance to the applicant to send all case files to the Solicitor General was received by the applicant on 23/5/2019 before the decision sought to be challenged was delivered which was on 21/2/2020. Therefore, the alleged issue of uncertainty as amplified by Mr. Christopher cannot arise herein since at the time on which the decision of this court was delivered (21/2/2020), the directives of the Ministry of Finance had already been issued to the applicant on 23/5/2019. More so, since the court records

(the applicant's affidavit as well as the submission) is silent as to when the file was transferred to the Solicitor General, obviously the delay to lodge the instant application from the time when the applicant was active might be caused by either negligence in handling the intended matter or failure to take proper action by the Office of Solicitor General or the Directorate of Legal Services of the applicant.

In the upshot, I find the applicant has failed to advance sufficient reasons for the grant of extension of time for lodging leave to appeal to the Court of Appeal. In the event, I accordingly proceed to dismiss the instant application with costs.

It is so ordered.

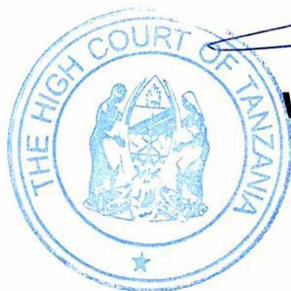


W.M. CHUMA

JUDGE

7/11/2023

Ruling delivered and dated this 07th day of November, 2023 in the presence of Mr Christopher Bulendu Advocate for the applicant and Ms Anna Amon Advocates for the respondent.



W.M. CHUMA

JUDGE

7/11/2023