

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 775/01 OF 2022

CHRIS GEORGE KASALILEAPPLICANT

VERSUS

TANZANIA INSTITUTE OF EDUCATION.....1ST RESPONDENT

THE ATTORNEY GENERAL2ND RESPONDENT

(Application for extension of time to file memorandum of appeal and record of appeal against the Ruling of the High Court of Tanzania at Dar es Salaam)

(Moshi, J.)

dated 9th day of August, 2022

in

Miscellaneous Civil Cause No. 26 of 2022

.....

RULING

11th & 19th March, 2024

NGWEMBE, J.A.:

By a notice of motion taken out under Rule 10 of the Tanzania Court of Appeal Rules 2009 (the Rules) and the supporting affidavit, the applicant has moved this Court to extend time so as to file his memorandum of appeal to challenge the ruling and drawn order of the High Court dated 9th August, 2022 in Misc. Civil Cause No. 26 of 2022.

At the hearing date of this application, the applicant procured the legal services of Mr. Jeremia Mtobesya, learned advocate, while the respondent had the legal services of Ms. Jesca Shengena, Principal State Attorney, assisted by Messrs. Evelius Elias Mwenda and Nicodemus Agweo, both learned State Attorneys.

Mr. Mtobesya commenced his submission by adopting the contents of the affidavit in support of the notice of motion, sworn by the applicant. He proceeded to recap the contents of the affidavit that, leave of the High Court to appeal to this Court was successfully sought and granted on 8th December, 2022 while the requisite certified documents from the High Court were collected on 19th August, 2022. Thus, counting from 19th August 2022 to the date when leave of the court was granted, that is on 8th December, 2022, the statutory time frame of 60 days to lodge an appeal was lapsed, hence the application for extension of time.

Further, he argued that, the intended appeal comprises a novel point of law worth consideration by the Court and give proper direction on a point of law, which has brought about two schools of thought before the High Court, related to proper interpretation of Rule 21 of the Judicature

and Application of Laws (Electronic Filing) Rules 2018 (GN No. 148). The question is when a court document is said to have been filed in court, whether on the date of filing electronically or upon payment of the filing fees? Such question has brought two schools of thought at the High Court. One school believes that the document will be counted to have been filed in court on the date of filing it electronically, while others consider that filing of a court document is related to payment of filing fees, therefore, a proper date of filing it in court is upon payment of filing fees. Such state of dilemma calls for proper guidance by this Court. He supported his argument by the decision in **Valerian McGivern vs. Salim Fakhrudin Dalali**, Civil Application No. 11 of 2015.

He rested his submission by praying to the Court to consider the circumstance of this application as constituting good cause satisfactory to grant extension of time.

In replying to the submission by the applicant's counsel, Ms. Shengena opposed it substantially by relying on one principle of law that, the granting of the application for extension of time is within the discretionary powers of the Court, which always must be exercised

judiciously. Thus, the applicant to succeed on application for extension of time, he should account for all days of delay. She insisted that, the applicant has failed to account for 16 days he delayed. Thus, prayed the Court to dismiss the application forthwith.

In brief rejoinder, Mr. Mtobesya challenged the learned Principal State Attorney that the time to account for is from 22nd December, 2022 up to 28th December, 2022, which is less than six days.

Having dispassionately examined both the contents of the affidavit in support to the notice of motion and carefully evaluated the respective oral arguments advanced by the learned counsel, to the best, the main issue for determination by this Court is whether the applicant has demonstrated good cause to warrant enlargement of time to do what he intends to do.

With regard to this application, the applicant raised substantially two issues in the notice of motion, one, that the delay was caused by the High Court's failure to deliver its ruling on an application for leave to appeal to the Court timely. He amplified that the court delivered its ruling on 8th December, 2022, while he was notified that the certified record of court

documents were ready for collection on 19th August, 2022. Thus, the applicant could not have lodged his appeal within 60 days as required by law prior to obtaining leave of the High Court.

The second ground is on point of law related to when the document for the court use is said to have been filed in court, whether it is on the date of filing it electronically or upon payment of the respective filing fees. The latter may amount into a point of law which involves interpretation of Rule 21 of the Judicature and Application of Laws (Electronic filing) Rules 2018 (GN No. 148). The rule is quoted as follows: -

Rule 21 (1) *"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected".*

(2) *"A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day".*

As a matter of literal interpretation of laws, the rule is clear that, the issue of filing documents electronically for court use, has no relationship with payment of filing fees. However, this is a gray area subject to be determined on appeal upon extension of time. This point likewise, exercised the mind of learned trial Judge as reflected at page 14 of the High Court's ruling that: -

"Despite the fact that on the face of it, the reading of rule 21 of the rules seems to be plain, yet there is a lacuna since the law doesn't provide for instances which the applicant or claimant files a case electronically well in time, but he doesn't pay the necessary fees timely, as is in the present case. Evidently, filing the case electronically, and staying dormant defeats the purpose of the law. It is my view that, to fill in the gap we should look at the purpose of the law and other legal requirements".

After making reference to some decided cases of the High Court, the learned trial Judge concluded that, the date of payment of filing fees should be counted as the proper date of filing the document in court.

I agree with the learned trial judge as well as advocate Mtobesya, that there is a lacuna in our rules calling for a decisive guideline of the Court on this point. This is a point of law of sufficient importance to be brought to the attention of the Court. I have perused various precedents of this Court on this point but failed to come across any one discussed the Rule. As was so decided in the case of **Lyamuya Construction Company LTD vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, which itemized certain guidelines upon which the court's discretionary powers may be exercised to grant extension of time, the existence of a point of law of sufficient importance constitutes good cause for extension of time. In respect of this application, I am satisfied that the issue of when a document for court use is deemed to have been filed in court is an important point of law capable of being ascertained by the Court. Thus, provide a duty to a court faced with an application for extension of time to grant it so as to fill in the available lacuna by the Court.

I am also aware that, as of now mostly, documents for court use are filed electronically, but payment of filing fees involves certain processes

which may cause delay up to two or three days. In such circumstances, which date should be taken to be the date of filing such document in court? I think this is a gray area to be determined by the Court on the intended appeal.

It is, I presuppose that, not for the court extending time to determine as to whether or not the point raised is correct or otherwise, such determination would be the domain of the Court that would preside over the intended appeal. On the premise, I am fortified in the stance in the case of **VIP Engineering and Marketing LTD and 3 Others vs. Citibank Tanzania LTD**, Consolidated Civil References No. 6,7 & 8 of 2006, where the Court observed that:

"We have already accepted it as an established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes sufficient reasons within the meaning of rule 8 of the Rules for extending time (now rule 10 of the Rules)".

In view of the above, I find the applicant has raised an important point of law constituting sufficient cause to extend time, even without considering other points raised by both counsel for good reason that even if I may consider them, will not change the already arrived conclusion. Therefore, the prayer for extension of time is granted to allow the applicant to lodge the contemplated appeal to the Court. The same is ordered to be filed within 30 days from the date of delivery of this ruling.

Order accordingly.

DATED at DAR ES SALAAM this 18th day of March, 2024.

P. J. NGWEMBE
JUSTICE OF APPEAL

The Ruling delivered this 19th day of March, 2024 in the presence of Mr. Deogratias Cosmas Mahingila, learned counsel for the Applicant, and Mr. Enelus Mwendwa, learned State Attorney for the Respondents and is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL