

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

PC CIVIL APPEAL NO. 35 OF 2021

***(Arising from the Ruling of the District Court of Tarime at Tarime in
Miscellaneous Civil Application No. 11 of 2021)***

BETWEEN

ALFRED MAWIRI APPELLANT

VERSUS

ISACK OCHUODHO 1ST RESPONDENT

JACKSON ADIEMA 2ND RESPONDENT

JUDGMENT

A. A. MBAGWA, J.:

This is an appeal against the ruling of the District Court of Tarime at Tarime in Miscellaneous Civil Application No. 11 of 2021 in which the respondents prayed for and were granted leave to file an appeal out of time.

The factual background of the matter may, in a nutshell, be recounted as follows; That the appellant, Alfred Mawiri filed a civil suit against the respondents, Isack Ochuodho and Jackson Adiema at Riagoro Primary Court in Civil Case No. 15 of 2020. He claimed a total sum of Tshs. 2,014,000/= being the costs he incurred when prosecuting criminal case against them. The said suit proceeded *ex parte* against the respondents and the court decided in favour of the appellant. The judgment was

delivered on 27th November, 2020 and primary court ordered the respondents to pay the appellant total sum of Tshs. 1,222,000/= being fare, meal costs, disturbance and time wastage.

Sometimes in February 2021 the respondent filed an application to set aside an ***exparte*** decision before Riagoro Primary Court. Unfortunately, their application hit the rock. Determined to challenge the same decision of Riagoro Primary Court, the respondents intend to appeal to the District Court of Tarime but they found themselves out of prescribed time hence they lodged an application for extension of time in Misc. Civil Application No. 11 of 2021 on 12th May 2021.

In their affidavit before the District Court of Tarime, the respondents deponed that their main reason for delay was unavailability of ruling sought to be impugned. They stated that they applied for the ruling to no avail until when they complained to the District Court which vide the letter dated 13th April, 2021 ordered Riagoro Primary Court to supply the respondents with the ruling. As such, the respondents were supplied with the copy of the ruling on 07th May, 2021. The respondents also deponed that their intended appeal has overwhelming chances of success because the trial court failed to consider their ground that they were not properly served with court summons.

In its ruling, the District Court of Tarime was convinced by the ground advanced by the respondents for they were not availed with the right to be heard. Consequently, it allowed the application.

The District Court's ruling dissatisfied the appellant hence he lodged the present appeal. The appellant filed a petition of appeal containing four grounds as follows;

1. The first appellate court grossly erred in law to grant extension of time whilst the respondents did not account for the day from 07/05/2021 when they filed Miscellaneous Civil Application No. 11 of 2021.
2. That the respondents had no reasonable ground for extension of time.
3. The appellate court misdirected itself for failure to notice that chances of success is not a ground for extension of time.
4. The appellate Tribunal grossly erred in law for failure to notice that attaching a copy of judgment to petition of appeal from primary court to district court is not a requirement.

When the appeal was called on for hearing, both appellant and the respondents appeared for themselves, unrepresented.

Submitting in support of the appeal, the appellant argued that the respondents did not account for their whereabouts from 07/05/2021 to

12/05/2021 and that they did not have reasonable ground for delay. He added that the fact that there were chances of success was not a good ground for extension of time. Further, the appellant argued that, copy of judgment was not required in the appeal from primary court to district court. He lamented that the District Court of Tarime violated section 4 (3) of Act No. 65 of 1963 which provides six weeks within which to set aside *ex parte* judgment. In conclusion, the appellant prayed the appeal to be allowed.

In reply, the respondents had the same argument that they did not appeal within time because they were denied the copy of judgment until when they complained to the District Court. They prayed the appeal to be dismissed.

Upon a thorough perusal of the record and hearing of the both parties' submissions, the issue that has to be resolved is always, whether, the **applicant** has shown good cause for extension of time. As to what constitutes the good cause is the question of fact, depending on the circumstances of each case.

Extension of time is a discretionary power of the court to be exercised judiciously. The Court of Appeal, in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women Christians Associations**, Civil Application No. 2 of 2010, established

guidelines to be observed by Court in granting extension of time. The Court held as follows:

"Four guidelines which should be observed by Court in granting extension of time: that is:

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 act that he intends to take, and

4. If the court feels that there are other sufficient reasons, such as existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged"

In granting the extension of time to the respondents, the District Court of Tarime, considered the ground that the respondents were not properly availed with the right to be heard before the Riagoro Primary Court in Civil Case No. 15 of 2020 as the respondents contended that they were not properly served with the summons.

Glancing at the trial court record, I found that it was not clear whether the second respondent Jackson Adiema was properly served. The summons sent to him shows that he was not available nor were his

whereabouts known. Further, there is proof to show that some further measures were taken to ensure that he was made aware of the case against him e.g., summons by publication.

For the said reason, I am at one with the Magistrate of Tarime District Court that the respondents demonstrated sufficient grounds to warrant them extension of time for they were not properly availed with their right to be heard. Consequently, I find this appeal without merit and consequently, I dismiss it.

It is so ordered.

Right of appeal is explained.



A. A. Mbagwa

JUDGE

22/09/2022