

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT DA ES SALAAM**

MISC. CIVIL APPLICATION NO. 25507 OF 2023

(Arising from Civil Case Number 143 of 2019)

OMARY ABOUDTHE APPLICANT

VERSUS

JUSTIN MASSAWE THE RESPONDENT

RULING

MKWIZU, J

By a chamber summons supported by an affidavit by Ashiru Hussein Lugwisa, the applicant's Counsel, the Applicant prays for an extension of time to appeal against a decision emanating from Kisutu Resident Magistrates' Court at Dar es Salaam, Civil Case No. 143 of 2023 delivered on the 20th March 2023. The deponent attributed the delay with delay a late supply to him of the necessary documents he timely requested despite constant and persistent follow-ups.

In response, the first respondent filed a counter affidavit sworn by one Justine Masawe, the respondent herein opposing the application.

Having adopted the affidavit in support of the application Mr. Lugwisa said the copies of judgment and decree of the decision which he seeks to challenge are , under order 39 Rule 1 (1) of the CPC, Cap 33 RE 2019, essential documents required to accompany a memorandum of appeal filed in court . That immediately after the delivery of the judgment on 20th March 2023, he wrote a letter requesting to be supplied with

judgement , decree and the proceedings despite a constant follow-ups by the applicant through an official communication to the trial court and that there was no formal response notifying the applicant that those documents were ready for collection . The applicant came to know that the judgment is ready on 24th October 2023 upon service on him of the application for execution by the respondent. He at this point instructed the lawyer on 27/10/2023 who studied the case and managed to file the application in court on 3/11/2023. He relied on the case of **The Board of Trustees of National Security Social Fund V New Kilimanjaro Bazaar Limited**, Civil Appeal No 16/2004(Unreported) on the principle that after a request for a copy of judgment is made by a party, it is the duty of a the court to notify a party so requested that the documents are ready for collection.

Mr Lugwisa was sure that the applicant has been diligent by acting promptly after he had learnt of the availability of the judgement to warrant the court exercise its discretionary powers to grant the application . Several cases were cited on the point including that of **Yusufu Same Vs Hadija Yusufu**, Civil Appeal No 1 of 2002(unreported); **Ireen Temu V Ngasa M. Dindi and Ki2017**(Unreported) Civil Application No 278/17/2017(Unreported) and **Maiko Lesani Kweka V John Eliafye**, (1997) TLR,152.

Responding to the applicants submissions, Mr. Nassoro advocated for the respondent having adopted the counter affidavit as part of his submissions said, the copies of judgment and decree were issued by the trial court on 26th June 2023. The respondent in this application retrieved the said records and being the decree holder, he filed an application for execution for the attachment of the applicant's bank

account on 21st July 2023. The respondent went further to filing an application for extension of time to file a bill of costs out of time on 4/8/2023, and an application for execution No 82/2023 for the arrest and detention of the applicant herein on 6th October 2023 after the failure of the 1st mode of execution preferred .

He was specific that the applicant was served with the application for extension of time to file bill of costs on 19th October 2023 after a delay of 116 days by the applicant to procure a copy of. While acknowledging the three letters requesting for the copies of judgement by the applicant dated 29th March 2023, 27th April 2023 and 13th September 2023, the respondent counsel said, the gap between the first letter and the last letter is 140 days unaccounted for condemning the applicant for being negligent in following up the claimed copies. He cited to the court the case of **Bruno Wensenslaus Nyalifa V The permanent secretary, Ministry of Home Affairs and Another**, Civil Appeal No 82 /2017 page 12 and **Lyamuya Construction Company Limited V Borad of Registered trustees of Young women Christian Associations of Tanzania**, Civil Application No 2 of 2010 praying for the dismissal of the application with costs.

In his rejoinder submission, Mr. Lugwisa contended that, nowhere in the courter affidavit the respondent had proved that the trial court had issued the requested documents on 26/6/2023 the arguments that could have been supported by the letter from the trial court notifying the parties that the documents requested are ready and this is supported by the absence of the attached copies of the said documents in annexure JM1, the respondents application filed on 21/7/2023 and in any casde the said application (annexture JM1) was never served to the applicant to

let him know of the readiness of the requested documents . He stressed that the only uncontroverted fact is that the applicant got the knowledge of the judgment on 24th October 2023 as pleaded under paragraph 11 of the supporting affidavit and acknowledged by the respondent in paragraph 11 of the counter affidavit.

Having considered rival arguments from both sides, the question to be considered in this application is whether the applicant has been able to show good cause warranting the sought order. In the instant case, the judgment was delivered on 20/3/2023, the applicant applied for copies of the proceedings judgment and decree on 29th March 2023, just nine days after the decision, the second reminder letter was filed in court on 27th April 2023 followed with a third reminder on 13th September 2023. Both parties agrees that there was no response to the said letter until 24/10/2023 when the applicant learnt of the obtainability of the said documents after service upon him of the application for execution by the respondent. He immediately engaged a lawyer on 27th October, three days thereafter who proceeded to filing of this application on 3/11/2023.

It is settled principle that applying for copies of proceedings and judgment within a short time from the date of judgment, and later making a follow up by way of a reminder, and finally lodging the application immediately after being supplied with the same, depicts diligence on the applicant. See **Mumello vs. Bank of Tanzania** [2006] 1 EA 227.

The allegation of indecision by the applicant in following up the documents despite the filing of several applications by the respondent after the delivery of the complained judgment deposed in the counter affidavit is without an eloquent denunciations because apart from the

lack of proof of service to the applicant, no indication that the complained documents were attached to the said application so as to hold the applicant irresponsible. I don't find anything to fault the applicant. His diligence and tenacity in following up the documents is demonstrated by the reminder letters that he kept on filing in court without response and his prompt action taken after he learned of the availability of the judgment and decree on 24/10/2023 after service upon him of the application for execution by the respondent.

It should be remembered that , in this matter, the copy of the impugned decision and decree are essential documents in appealing processes without which no appeal could be filed in court and therefore the applicant cannot by any means be blamed for the delay in supply of the requisite copies he timely requested committed by the court . My conclusion find supports from the case of **Wambele Mtumwa Shahame vs. Mohamed Hamis** (Civil Reference 08 of 2016) [2018] TZCA where the Court of Appeal said:

*"The position of an application for extension of time is entirely different from an application for leave to appeal. He is concerned with showing **"sufficient reason"** why he should be given more time and **the most persuasive reason he can show is that the delay has not been caused or contributed to by dilatory conduct on his part.** But there may be other reasons, and these are all matters of degree."*(*emphasis added*)

The general rule developed by the above authority is that a delay that is beyond the full control of the party or due to occurrence of facts that could not be contemplated should favour an extension of time in appropriate cases. See also **Bahati Matimba vs Jaglo Enterprises Ltd**, Misc. Application No. 01 of 2020 (Unreported) and **The Registered Trustees of the Archdiocese of Dar es Salaam vs. the Chairman Bunju Village Government & Others**, Civil Appeal No 147 of 2006 (unreported) to mention just a few.

I am, under the circumstances of this case, satisfied that the delay in this matter was outside the applicant's control. The application is thus worthy.

Consequently, the applicant's application is granted. The applicant must lodge the intended appeal within 30 days from today. No order as for costs.

Dated at Dar es salaam, this 19th day of April 2024




E.Y. MKWIZU

JUDGE

19/4/2024