

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA
MISC CIVIL APPLICATION NO. 31 OF 2018
(Originating from Civil Appeal No. 59 of 2016 High Court-Arusha)

DAWI AKKO**APPLICANT**
VERSUS
PETRO INGI**1ST RESPONDENT**
PASCHAL VICENT**2ND RESPONDENT**
ERRO AKUNAAY**3RD RESPONDENT**

RULING

BEFORE: MAIGE, J.

This is an *omnibus* application for an extension of time to apply for restoration of the Civil Appeal 59 of 2016 and for the substantive application for restoration of the same. The application for extension of time is preferred under section 14 (1) of the Law of Limitation Act, Cap. 89 RE 2002 whereas the application for restoration is under order XXXIX Rule 19 of the Civil Procedure Code, Cap. 33, R.E., 2002. The application is supported by the affidavit of DAWI AKKO, the applicant and has been opposed by the counter affidavit of the first and the third respondent. The second respondent has not filed any counter affidavit. Neither has he over entered appearance. For those reasons, the applicant was allowed to proceed with the matter in his absence.

At the hearing of the application, **Mr. Said Said**, learned advocate, represented the Applicant. The respondent enjoyed the service of **Miss. Winnie Everest** and **Bashemu**, learned advocates. There appears to be a consensus between the counsel on the position of law that, for an extension of time to be granted, the applicant must establish by affidavit or otherwise that, he was prevented by sufficient cause from pursuing his action within the time limit. As held by the Court of Appeal of Tanzania in **BUSHIRI HASSAN VS LATIFA LUKIO MASHAYO, CIVIL APPLICATION NO. 3 OF 2007, C.A. (UNREPORTED)**, the applicant has to account for everyday of the delay, for otherwise there would, if I could use the wise words of the Court of Appeal, "**be no point of having rules prescribing periods within which certain steps have to be taken**".

In determining whether or not sufficient cause exists, there are four important factors which, according to the authority in **ROYAL INSURANCE TANZANIA LIMITED VERSUS KIWENGWA STRAND HOTEL LIMITED, CIVIL APPLICATION NO. 111 OF 2009** have to be taken into consideration. These are; First, length of the delay; Two, reason of the delay; Three, degree of prejudice to the respondent if the application is granted; Four, chances of appeal succeeding if the application is granted. The four tests, in my understanding, are not the only tests. Neither does each and every one apply in every case. In its own words, the Court of Appeal had the following to say at page 14 of the judgment that: *there could be many other factors, that could arise from the facts of each case.*

Therefore, what amount to "sufficient cause" is a question of fact which must be determined by reference to all the circumstances of each particular case.

In his submissions in rebuttal, **Mr. Said, learned advocate** for the applicant adopted the factual deposition in the affidavit and invited the Court to hold that sufficient cause for extension of time and for restoration of the appeal has been demonstrated. In the first place, it was the counsel's submissions that the delay to pursue the appeal resulted from the negligence of the previous advocate of the applicant. The advocate is blamed for his negligent omission to inform the applicant about the outcome of the appeal. The counsel contends that it was not until on 31st July 2017 when the applicant became aware of the decree. That is when he was served with a notice to appear in an execution proceedings. Negligence of an advocate, the counsel submitted, may amount to a good cause for the purpose of extension of time. He has placed reliance on the authorities in **FELIX TUMBO KISIMA VS. TTCL AND ANOTHER, TLR (1997 at 57.**

As regards the period between July 2017 to the period of the filing of the application, the affidavit contains no factual justification. Nevertheless, in his submissions, Mr. Said has called upon the Court not to limit the term "sufficient cause" with the actual period of delay. In his humble opinion, the Court has, in determining an application of this nature, to consider the circumstances surrounding the appeal and whether there is illegality involved in the intended appeal. In his humble opinion, paragraph 11 of

the affidavit discloses a serious illegality in the dismissed appeal. The counsel has referred me to the authority in **REPUBLIC VS. JOHN KAPOMBE AND OTHERS, TLR (1985) AT 86** in support of the view that sufficient cause is not limited to the period of delay but the grounds of the intended appeal as well.

I have taken time to study the affidavit and counter affidavit. I have also considered the rival submissions. The question that I have to determine is whether sufficient cause for extension of time exists. While the delay for the period between the dismissal of the appeal and 31st July 2017 has been justified on account of the alleged negligence of the previous advocate, the subsequent delay of a period of more than seven months from 31st July 2017 when the applicant became aware of the dismissal of his appeal and 18th April 2018 when he filed the instant application, has not been accounted for. It should have. As held in **BUSHIRI HASSAN VS LATIFA LUKIO MASHAYO, CIVIL APPLICATION NO. 3 OF 2007, C.A. (UNREPORTED)**, the applicant was obliged to justify for every day of the delay.

The contention that the instant application should be granted on the ground of illegality lacks merit too. In paragraph 11 of the affidavit, the alleged illegality in the decision of the trial court refusing to admit a document for the reason of being a photocopy. With due respect to the counsel, the error, assuming, without deciding that, it was apparent on the face of the record of the trial court, it would have not the effect of rendering the decision of the trial court illegal. It could have only rendered

it incorrect. Therefore, much as I agree that illegality can be a ground for extension of time, it is my firm opinion that, the applicant has not been successfully in demonstrating any illegality involved in the dismissed appeal.

The law limiting the period for pursuing an action was not made without intention. It was meant to ensure that justice is done. Therefore, even though this Court enjoys wider discretion to grant an extension of time, the discretion has to be exercised reasonably, judiciously and on sound legal principles. There should therefore be factual materials on the basis of which it can be granted. In the case of **RATMA VS. v CUMARASAMY AND ANOTHER (1964) 3 All ER 933**, Lord Guest had this to say at page 935A –

The rules of court must, prima facie be obeyed, and, in order to justify a court extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation.

In my opinion therefore, the period of time between 31.7.2017 when the applicant discovered that his appeal had been dismissed and 18. 04. 2018 when the instant application was filed, has not been accounted for. There is therefore not sufficient materials on the basis of which I can grant the

application. For those reasons therefore, the application is bound to fail and it is accordingly dismissed with costs.

It is so ordered.

(Sgd) MAIGE.I
JUDGE
12/09/2018

Date: 12/9/2018

Coram: I. Maige, J

Appellant:

For the Appellant: Mr. Said Said, Advocate

Respondent:-

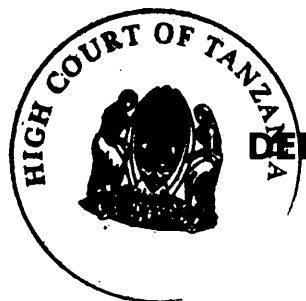
For the Respondent: Misc. Winnie, Advocate.

C/C:- Mariam

Court: Judgment delivered; appeal allowed.

(Sgd)I.MAIGE
JUDGE
12/9/2018.

I hereby certify this to be a true copy of the original.



J.F. Nkwabi
J.F. NKWABI,

DEPUTY REGISTRAR

ARUSHA

01/10/2018