

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION No. 15 OF 2019

(Originating from C/F Civil Case No. 10/2018 District Court of Ilemela, at Ilemela District at Mwanza)

MOBISOL UK LIMITED**APPLICANT**

VERSUS

VENGE MASALA NGIKA**RESPONDENT**

RULING

02nd June & 28th August, 2020.

TIGANGA, J.

In this application the court has been moved under section 14 (1) of the law of Limitations Act (Cap 89 RE 2019) to grant the following orders;

1. That this honourable court be pleased to extend time to enable the applicant herein to file an appeal arising from the Judgement and Decree of the District Court of Ilemela at Ilemela District Mwanza in Civil Case No. 10/2018 delivered by Hon. A. L. Kalegeya, Resident Magistrate on 23/09/2019.
2. Costs.

The application was supported by an affidavit of Mnyiwala Mapembe, an Advocate. In his affidavit, he deposed that on 25/09/2019, acting on behalf



of the Applicant, he wrote a letter to the District Court of Ilemela requesting to be supplied with certified copies of the judgment, proceedings and decree for purposes of filing an appeal to the High Court of Tanzania Mwanza. However, he was not so supplied, consequently he wrote two reminder letters dated 10/10/2019 and 22/10/2019, yet still he was not supplied with the same.

On 19/11/2019 he travelled from Arusha/Kilimanjaro to Mwanza and made follow up to the registry of Ilemela District Court, where he found the copies were not ready for collection, subsequent of which he wrote a third reminder letter reminding the court to supply him the said documents, yet still he was not supplied with the said copies. As part of his evidence in the affidavit, he attached both letters copies and Itinerary receipt to and from Mwanza together with the Boarding pass.

On 16/12/2019 he travelled again from Arusha/Kilimanjaro to Mwanza to make follow up to the District Court Registry, where he once again found copies were not ready for collection, he attached a proof of his travel to and from Mwanza. That he was supplied with a copy of Judgement on 03/12/2019. He thereafter continued to make follow up to get certified copies of the proceedings and decree including writing a letter on 08/01/2020 requesting the same, only to be supplied with a copy of decree on 20/01/2020. The decree supplied on 20/01/2020 had some errors consequent of which on 22/01/2020 he asked to be supplied with the correct one which was supplied on 26/02/2020, and on 27/02/2020 he filed this application.

He in the end deposed that all 156 days lapsed while he was making follow up of the copies of decree and judgement. Therefore his delay to file an appeal was occasioned by no fault of the applicant, and that considerable amount of time lapsed when he was diligently making follow up of the copies of judgement and correct Decree.

He also deposed that the intended appeal raises issues of patent illegalities which ought to be adjudicated upon and decided by the High Court of Tanzania.

The application was countered by the Counter Affidavit filed by Innocent Michael an Advocate dully instructed to represent the respondent in the instant application.

He said the affidavital evidence by the counsel for the applicant is untrue and fabricated as the copies of judgement and decree were available for collection since 03/12/2019 and 29/09/2019 respectively and the respondent collected his copies of Judgement on 03/12/2019 and Decree on 29/09/2019.

He also deposed that the alleged letters were not written and filed on the date they are alleged to have been filed. He also deposed that the Mismatch of the decree and judgement could not prevent the applicant to file his appeal in time, what he was doing is delaying tactics.

With the leave of the court, the application was argued by way of written submissions. Parties filed their respective submissions as ordered by the court. In the submission in chief, the applicant submitted that after

the judgment of the trial District Court the applicant was supposed to file his appeal in 90 days as provided under part II, item I of the schedule to the Law of Limitation Act (Cap 89 RE 2019). The appeal was supposed to be accompanied with the copy of judgment and decree as provided under Order XXXIX Rule 1 (1) of the Civil Procedure Code (Cap 33 RE 2019).

He was not supplied with the copies of the judgement and decree despite the effort he made which included writing a letter of request with four reminder letters and so many other effort as indicated in the affidavit in support of the application, which details for the purpose of clarity, I will not repeat.

He cited the case of **Benedict Mumello vs Bank of Tanzania** CAT - Dar es Salaam, Civil Appeal No. 12/2002, where it was held in effect that failure to supply a correct copy of judgement and decree is considered to be sufficient cause for delay. He also asked the court to rely on section 19 (2) of the Law of Limitation Act which requires the court in computing the period of Limitation to exempt the period before which the copies of judgement and proceedings have not been supplied. The other ground relied upon is that of illegalities in the judgment to be appealed against. He cited the case of the **Principal Secretary Ministry of Defence and National Service vs Devram Valambhia** (1992) TLR 387 in which illegalities was cited as one of the ground for extension of time.

One of the points of law was that, general damage was awarded without giving reasons for decision. In buttress to that point, he cited the

case of **Samwel Munsiro vs Chacha Ikwabe** CAT Mwanza Civil Application No. 539/08 of 2019 CAT.

In reply to the submission in chief the respondent adopted the contents of the Counter Affidavit filed in opposition of the application and the submission was just expounding the contents of the counter affidavit. Now save for issues which are new and were not part of the Counter Affidavit, I will not repeat what I have already summarised from the Counter Affidavit. He submitted that the delay was caused by the lack of diligence and negligence; he cited the case of **Paul Martin vs Betha Anderson**, Civil Application No. 07/2005 Court of Appeal of Tanzania Arusha (unreported) in which it was held that lack of diligence on the part of the applicant entitles not the applicant extension of time.

He also cited the authority in the case of **Lyamuya Construction Company Limited vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 02/2010 CAT, in which it was held that the applicant must show diligence, and not apathy, negligence or sloppiness in prosecution of the action he intends to take. He submitted that the applicant did not at all take necessary steps, as he was negligent in appealing.

Regarding the point of illegalities, he submitted that there is no illegality in the award of general damage, he cited the case of **Tanzania - China Friendship Textile Co. Limited Vs Our Lady of Usambara Sisters** (2006) T.L.R. 70 that general damages are paid at the discretion of the court. He asked the application to be dismissed for lack of merit.

In rejoinder the applicant sought to justify what he said. He submitted that the respondent did not present evidential proof that the copies were ready for collection and that he collected the same earlier.

He also submitted that he was diligent, and actually took necessary steps including writing letters reminding to be supplied with the document but the same were not supplied. He submitted further that his action was in line with the authority in **Lyamuya Constriction Company Limited Vs The Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra). He said he wrote four letters and came physically to court to make follow up but in vain.

Last was the issue of illegality, he insisted that the award of general damage was without reason. He in the end asked the application to be granted, for the applicant did establish good cause for delay.

Having summarised at length, the content of the application, counter affidavit and the submission by both parties, there is no dispute that this court under section 14 (2) of the Law of Limitation Act (Cap 89 RE 2019) has powers to extend time within which to appeal. The only condition is that the applicant seeking to appeal out of time must show good cause for delay.

Now form the summary or the submissions above, the issue for determination is whether the applicant has shown good cause which prevented him from filing an appeal within time?

Now, the term good cause has not statutory defined but case laws, have defined it, some of which have been cited by the parties in their respective submissions.

Among those cited, I will prefer to be guided by the authorities in the case of **Lyamuya construction Company Limited Vs The Board of Registered Trustees of Young Women's Christian Association of Tanzania** (*supra*) in which the Court of Appeal held *inter alia* that;

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But the discretion is Judicial, and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrary. On the authorities however, the following guideline may be formulated:-

- a. *The applicant must account for all the period of 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 sufficient reasons, such as the existence of a point of law of sufficient importance such as the illegality of the decision to be challenged"*

In this application, the applicant has demonstrated through the affidavit sworn and filed in support of the application that he was not supplied the copy of judgment and decree on time for the whole period of 156 days which he delayed.

He went further and proved various efforts which he was making in making follow up, he attached about four letters which he wrote requesting to be supplied, with the said copies. He also attached the air ticket as well as the boarding pass to prove that he did not only write letters but also he made physical follow up. By these demonstrated effort the applicant can be rightly taken to have been diligently taken action to prosecute the matter at hand and made close follow up to the respective registry which proves his diligence.

The applicant has indicated and proved that after he was served, he took only one day to prepare and file this application, this means the delay is not inordinate, and I am satisfied that the appellant has accounted for all days of delay. I hold so, because while the respondent has blamed the applicant for being untrue in the affidavit, however, he has not at all given any evidence to disprove the evidence submitted by the applicant.

For that reason, I find the applicant to have given good cause for his delay. As this ground has sufficed to establish good cause, I find no need of dealing with the ground for illegality. In fine, I find the applicant to have given sufficient cause for delay; he is entitled for extension of time.

A handwritten signature in blue ink, appearing to read "Justice D".

In the upshot, the application is therefore granted, time within which to file the appeal to the High Court is further extended for fourteen days from the date of this ruling. No order of costs made.

It is so ordered.

DATED at **MWANZA**, on this 28th day of August 2020


J. C. Tiganga

Judge

28/08/2020

Ruling delivered in open chambers in the absence of the applicant and in the presence Miss Milembe, Advocate for the respondent.


J. C. Tiganga

Judge

28/08/2020

