

**IN THE HIGH COURT OF TANZANIA
IN HE DISTRICT REGISTRY
AT MWANZA**

MISC. CIVIL APPLICATION NO. 161 OF 2019

(Arising from decision of the High Court of Tanzania Mwanza Registry by S.M.Rumanyika, J,
dated 4/8/2019 in Civil Appeal No. 481 originating from Civil Case No. 17 of 2017 RM's Court
Musoma)

MELT GINNING COMPANY LTD..... APPLICANT

VERSUS

MAKOYE PHINIAS 1ST RESPONDENT
JUMA MALIMA.....2ND RESPONDENT
VICENT MAGATI.....3RD RESPONDENT
PHINIAS BUNYINYIGA.....4TH RESPONDENT
GEORGE OONGO.....5TH RESPONDENT

RULING

16.4.2020 & 23.4.2020

U. E. Madeha. J

The application at hand, which is by way of chamber summons, has been made under the provision of section 11 (1) and section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 (R. E. 2002). Whereby the applicant is seeking the indulgence of the Court to extend the time within which to lodge the appeal out of time to the Court of Appeal in respect of the decision of the High Court of Mwanza Registry, in Civil Appeal No. 48 of 2018.

The applicant submitted that, the applicant cannot be punished for his advocate negligence, the court need to consider a number of days he delayed.

The respondent submitted that judgment was delivered on 14/8/2019 the applicant filed his notice of appeal after 18 days had passed since 19/8/2019. He was supposed to file the notice of appeal within the prescribed time of 14 days as prescribed by law. The applicant failed to file notice of appeal within 14 days, he is required by law before filing the extension of time, to file her notice of appeal out of time as provided under section 11 (i) of the Appellate Jurisdiction Act Cap 141 (R. E. 2002) which is provided herein below:-

"11 (i) subject to subsection 2, an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of a subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for

giving the notice or making the application has already expired”

Respondents further questioned the legality of applicant's application before this court. The notice of appeal filed by the applicant together with copies of proceedings, judgment and decree was not served to both the 1st, 2nd, 3rd, and 5th respondents as required by law. The applicant learned advocate in his written submission remained silent on that issue and decided not to say anything. Silence on the part of applicant's advocate on that legal issue means admission of fact raised. The applicant's application before this court is premature and incompetent.

Going through applicant's written submission, the applicant in paragraph 6 of her sworn affidavit stated that, from the date of judgment up to the filing of this application is about 69 days. Notice of appeal was lodged by applicant's former advocate Mr. Philipo, who later decided to abandon the appeal without communicating to the applicant that he is no longer representing the applicant when days of lodging an appeal had passed.

The applicant in her written submission is lamenting that she cannot be punished for her advocate's negligence. The court needs to consider a number of days the applicant delayed (9) days, but was unable to account for each day of her delay.

As seen in the case of **Lyamuya Construction Company limited Versus Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 OF 2010 (unreported) the court of appeal had this to say: -

"As a matter of general principle, it is the discretion of the court to grant an extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reasons and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines 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, not apathy, negligence or sloppiness' in the prosecution of the action that he intends to take.*

(d) *The court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

The Court of Appeal of Tanzania had further occasion of dealing with circumstances in which application for extension of time can be granted or refused. In the case of **Bushiri Hassan Versus Lathefa Lukio Mathayo**, court of appeal Tanzania, Civil Application No. 3 of 2017 Court of Appeal held that: -

"..... The facts still remains however that no sufficient cause has been shown for the delay and it relay does not matter that the application was filed even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken" at page 7 the Court of Appeal went on to state:-

In the end, I find that the applicant has failed to show sufficient cause as to why he should be granted an extension of time to apply for leave to appeal to court of appeal, I accordingly dismiss the application with costs”.

The only reasons given by the applicant for her delay to file her application within the time prescribed by law is that, her former advocate Mr. Philipo was negligent. In the case of **Maulid Hussein Versus Abdallah Juma Misc. Civil Application** No. 20 of 1988 (unreported) Court of Appeal of Tanzania held that the mistake of the counsel or the applicant, or even the prospects of the intended appeal succeeding is not a sufficient ground for granting leave to appeal out of time.

The applicant’s application for extension of time be dismissed with costs for lack of merits and failure to advance sufficient cause for applicant’s delay.

Apart from the foregoing, indicated earlier that the applicant’s High Court Civil Appeal No. 48 of 2018 was allowed with costs on 4.8.2019 vide the Judgement of the Court. The applicant was supplied with copies of judgement on 14.8.2019, while the application at hand was lodged on 24th

October 2019. One would note that, a long spell has passed between the two dates. The explanation which was given by the applicant for delay, was to the effect that; it was the advocate negligence, the Court needs to consider the number of days the applicant delayed nine days. He prayed to be granted leave to lodge an appeal to the Court of Appeal. The applicant failed to prove that there is sufficient cause, and grant an extension of time, each day passes beyond the prescribed time counts and has to be counted for. The reasons advanced by the applicant that the court has the duty to consider the number of days the applicant delayed cannot constitute reasonable cause. In the case of **Blue Blue Line Enterprises Ltd Versus East Africa Development Bank** Misc. Civil Application Cause No. 135/95 where Katiti J held that: -

"It is trite law that extension of time cannot be claimed as a right, that the power to grant this concession is discretionary, which discretion it is exercised judicially. Upon sufficient cause being shown which has to be objectively assessed by Court."

The applicant had done nothing, it was expected that the applicant would make account for each day of delay. In order the applicant to have

benefited as put very clearly in the Misc. Civil Cause No. 128/97, **imram Investment Ltd Versus Printpack Tanzania and another** where it was held that: -

"Applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation."

In holding the here above case, the Court of Appeal referred the case of Misc. Reference No. 14 of 1998 between **Alison Xerox Sila Vs Tanzania Harbours Authority**, Court of Appeal unreported it was held that;

"Lapse, inaction or negligence on the part of the applicant seeking extension of time, does not constitute the sufficient cause to warrant an extension of time under section 14 (1) of the law of limitation."

I found that from 14.8.2019 when the appeal was allowed the applicant brought no sufficient reasons, to while the application at hand was lodged on 24th October 2019, the applicant failed to account for each day of delay.

Thus, to this Court no sufficient cause shown by the applicant.
Hence, the application is dismissed, with costs. Order accordingly.

DATED and **DELIVERED** in **MWANZA** on this 23rd day of **April** 2020.



.....
U. E. Madeha
Judge
23.4.2020

