

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO.14 OF 2021**

*(Arising from the decision of the District Court of Illemela in Civil Appeal No. 04 of 2019. Originating from the Primary Court of Illemela in Civil Case No.47 of 2019)*

**ZUBERI MUSTAPHA ..... 1<sup>ST</sup> APPLICANT**

**MUSSA IBRAHIM..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**RAMADHANI ABDALLAH .....RESPONDENT**

**RULING**

*Date of last Order: 15.06.2021*

*Date of Ruling: 17.06.2021*

**A.Z.MGEYEKWA, J**

The applicant has instituted an application which is brought under section 25 (2) (b) of the Magistrate Court Act, Cap.11 [R.E 2019] and section 95 of the Civil Procedure Code Cap. 33 [R.E 2019]. The Order sought is for an extension of time to file an appeal against the decision of

the Ilemela District in Civil Appeal No. 04 of 2019. The application is supported by an affidavit deposed by Zuberi Mustapha and Mussa Abdallah, the applicants. The respondent resisted the application and has demonstrated his resistance by a counter-affidavit deposed by Ramadhani Abdallah, the respondent.

When the matter was called for hearing on 15<sup>th</sup> June, 2021 the applicants enjoyed the legal service of Mr. Zephania Bitwale, learned counsel while the respondent appeared in person unrepresented.

It was Mr. Bitwale, learned counsel for the applicants who kicked the ball rolling. In addressing the Court, Mr. Bitwale urged this court to adopt the affidavit in support of the application as part of his oral submission. He submitted that the applicants are seeking an extension of time to file an appeal against the decision of the District Court of Ilemela. He held the view that the applicants in paragraph 6 of their affidavit state that on 25<sup>th</sup> March, 2020 the second applicant fall sick, they have attached a Doctor's report to support their assertion. He went on to state that the first applicant was out of Mwanza, she traveled to Dar es Salaam. To support his submission he referred this court to paragraph 11 of the affidavit.

It was Mr. Bitwale's further submission that the applicant had a legal service of Ms. Dorothea at the District Court of Ilemela whereas Ms.

Dorothea assured the applicants that she was making a follow-up to find out the outcome of the case. Mr. Bitwale went on to state that the Judgment was pronounced in the absence of both parties and the learned counsel forgot to inform his clients. Mr. Bitwale argued that it was the Advocate's negligence therefore parties are not required to be punished by their Advocate act.

The learned counsel for the applicants further submitted that this court has wide discretion to grant the applicant's application for extension of time. Mr. Bitwale fortified his submission by referring this court to the case of **Kilunga & Company Limited v NBC Limited** [2006] TLR 235. He went on to state that the applicants have sufficient reasons to move this court to grant their application. He contended that the applicants will suffer loss in case this court will not grant the applicant's application. He added that the applicants want the first appellate court to determine additional evidence related to the respondent's group which is not existing.

On the strength of the above submission, Mr. Bitwale beckoned upon this court to allow the applicant's application.

Opposing the application, the respondent contended that the District Court of Ilemela delivered its Judgment a long time ago. He wondered why the applicants did not file their appeal within time while they were

represented by an Advocate. In his view, as long as the applicants were represented then they were required to lodge their appeal timely.

Regarding the nonexistence of the respondent's group, he argued that the same does not detain the applicants to pay their debts since they obtained a loan from the respondents' group.

Rejoining, Mr. Bitwale reiterated his submission in chief. Insisting, he states that the issue of non-existence of the said group requires evidence.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge the intended appeal against the decision of the District Court dated in Civil Appeal No.04 of 2019.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously based on the material placed before the court for its consideration. One of such materials is, as I understand the law, is that an applicant must not only demonstrate reasons for the delay but also, he must account for each day of delay in taking a particular step in the proceedings. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business**

**Limited v Amos David Kassanda & 2 others**, Civil Application No.48/17/2018 and the Court of Appeal of Tanzania decisively held:-

*“It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.”*

Additionally, there is no gainsaying that a party seeking the court to extend the time within which to do an act beyond the time by law has to show good cause for the delay. For this court to grant an extension of time, the applicant must state sufficient reasons for his delay and account for each day of delay. As it was held in the case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) which was delivered in May, 2019.

The court is required to look at the length of the delay, the reason for the delay, and whether or not there is an arguable case as stated in the case of **Nicholaus Mwaipyana v the Registered Trustees of the Little Sisters of Jesus of Tanzania**, Civil Application No.535/8 of 2019; [27<sup>th</sup> March, 2020 TANZLII] and the case of **Lyamuya Construction Company Limited v Board of Trustees of Young Women’s Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported). In

the case of **Lyamuya Construction Company Ltd** (supra), the Court said that factors to be considered would normally include the following:-

- (i) That the applicant must account for all the period of delay.
- (ii) That, the delay should not lie inordinate.
- (iii) That, the applicant must show diligence and not apathy negligence, or sloppiness in the prosecution of action that he intends to take.
- (iv) That, if the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient of a point of law sufficient importance, such as the illegality of the decision sought to be challenged.

After taking into consideration what has been stated in the affidavit filed by the applicants and the applicants' advocate submission, I would like to make an observation that the applicant's delay to file the appeal time is based on two grounds; one is that the applicant's Advocate acted negligently after failure to notify the applicants that the lower court Judgment was delivered. He stressed that the fault of the Advocate was not attributed to the applicants. In my view, the Advocate might have been negligent, however, the applicants were also supposed to make follow-up instead of depending on the learned counsel.

Records reveal that the Judgment was delivered on 6<sup>th</sup> April, 2020 and the instant application was lodged before this court on 12<sup>th</sup> February, 2021. Counting the days of delay; 10 months lapsed from the date when the appeal was delivered. The learned counsel for the applicants contended that the second applicant on 25<sup>th</sup> March, 2020 fall sick to support his submission he attached a Medical Report (Annexure P-1) However, the said Medical Report shows that the applicant was sick without indicating if he was hospitalized. Additionally, from 25<sup>th</sup> March, 2020 to 12<sup>th</sup> February, 2021 the days of delay are not accounted for.

The learned counsel of the applicants made another bite at the apple, he claimed that the first applicant was not in Mwanza, he traveled to Dar es Salaam on 01<sup>st</sup> April, 2020, two months after the delivery of lower court Judgment. However, he did not account for the days of delay from March to 01<sup>st</sup> April, 2020. The alleged ticket (Annexure B1) shows that the first appellant returned to Dar es Salaam in January, 2021. I have scrutinized the bus ticket, the month is altered. Nevertheless, the days for delay from 27<sup>th</sup> January, 2021 to 12<sup>th</sup> February, 2021 were not accounted for. The applicants were required to account for each day of delay.

Reading, paragraph 8 of the affidavit shows that Ms. Dorothea, learned counsel informed the applicants in May, 2020 through the phone that the Judgment was delivered. However, the applicants did not make any

follow-up. Instead, the applicants are going fishing for information which is not supporting their application for extension of time.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicants' application. I am satisfied that the applicants have not disclosed sufficient reasons to move this court to grant their application.

In the upshot, this application is dismissed without costs.

Order accordingly.

Dated at Mwanza this 17<sup>th</sup> June, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

17.06.2021

Ruling delivered on 17<sup>th</sup> June, 2021 via audio teleconference whereas both parties were remotely present.

  
A.Z.MGEYEKWA

**JUDGE**

17.06.2021