

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 367 of 2021

(Emanating from the decision of High Court in Pc Civil Appeal No 27 of 2019, Hon. De-Mello J, dated 09th April, 2020)

UWENACHO SALUM.....APPLICANT

VERSUS

MOSHI SALUM NTANKWA.....RESPONDENT

RULING

Date of last Order: 19/05/2022

Date of Ruling: 24/06/2022

E.E. KAKOLAKI J.

The calling issues for determination in this application as per the applicant's two prayers are, *one*, whether the applicant in this application has adduced sufficient cause to enable the court to grant her extension of time to apply for certificate on a point of law against the decision of this Court in PC. Civil Appeal No 27 of 2019, and *two*, whether the points raised by the applicant are worth consideration by the Apex Court. The applicant who is seeking for orders of *extension of time to apply for certificate on point of law and grant of the certificate that points of law are involved in the above cited decision*

has preferred this application under sections 11 (1) and 5 (c) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019] (the AJA) and Rules 45 (a) and 47 of the Tanzania Court of Appeal Rules of 2009. The same is supported by the affidavit of Charles G. Lugaila, applicant's counsel and strenuously resisted by the respondent who filed the counter affidavit to that effect through his advocate one Casmir F. Nkuba. Hearing of the matter proceeded by way of written submission and both parties complied with the filing schedule orders. Briefly from the material gathered from the affidavit, the applicant on 4th December, 2018 lodged an appeal Pc. Civil appeal No 27 of 2019 through the District Court of Ilala as required by the law, the appeal which was presided over by Hon. De-Mello J and decided on the 9th April, 2020 in favour of the Respondent. Not amused the applicant made follow up of copies of Judgment and Decree which were supplied to her on 7th May, 2020 and managed to file the Notice of Appeal within time on 8th May 2020. Unfortunately, while preparing to apply for leave (Certificate on point law) to appeal to the Court of Appeal, it came to her attention that, the names of parties were incorrectly inscribed in the Judgment and decree in Pc. Civil Appeal No 27 of 2019, the error which forced her to withdrawal the Notice of appeal from the Court of Appeal. Subsequent to that, she filed Misc. Civil

Application No 263 of 2020 in this court seeking for rectification of parties incorrect names the application which was granted on 11th August, 2020. As she was time barred to refile the Notice of Appeal to the Court of Appeal, she successfully applied for extension of time within which to file the same through Misc. Civil Application No. 605 of 2020, vide this court's ruling handed down on 28/06/2021. The said Notice of Appeal duly signed by the Registrar on the 14th July, 2021 and serviced to the respondent on the same date, as correct rectified copies of judgment, decree and proceedings were supplied to the applicant 12th August, 2020.

It is from the above sequence of events, Mr. Lugaila in his submission in support of the first prayer for extension of time to apply for certificate on point of law out of time urged this court to grant the prayer after considering following grounds. One, that parties were incorrectly inscribed in the impugned judgment, decree and proceedings hence it was mandatory to withdraw the defective Notice of appeal and refile it first. Second, as lodging Notice of appeal was a prerequisite condition for filing the appeal to the Court of Appeal as provided under Rules 46(1) and 83(4) the Court of Appeal Rules, 2009, the time spent to apply for refiling it afresh and applying for correction of errors in the judgment, decree and proceeding until when all

those documents were supplied to the applicant on 14/07/2021 should not be reckoned, as such delay is a technical delay than an actual one since the applicant has been in court's corridor in pursuit of her rights and has managed to account for such delay. And further that, the application has been filed in less than 14 days from the day of filing the Notice of Appeal. On technical delay the Court was referred to the case of **Benedict Shayo Vs. Consolidated Holdings Corporation as Official Receiver of Tanzania Film Company Limited**, Civil Application No. 366/01 of 2017 (CAT-unreported). On those reasons, it was his prayer that time to file an application for certification on point of law be granted as there is also a serious point of law to be considered higher Court.

As consideration for the second prayer depends on the grant of the first prayer, in this ruling I find it apposite to consider and determine the said first prayer which as hinted above is vehemently contested by the respondent.

In rebuttal Mr. Nkuba while citing the case of **The Registered Trustees of Dodoma BAKWATA Vs. The Registered Trustees of Dodoma General Muslim Association**; Civil Application No 512/03 of 2019 (CAT-unreported) insisted that, applicant has to account for each day of delay in which she has

failed. He said, the Judgment and decree were availed to her on 7th May 2020. As such, she became aware of the error on names from that date but opted to file first the Notice of appeal without taking legal steps for the correction of errors until 3rd June 2020, when filed an application for correction of error after audience with the Registrar hence leaving the said 27 days unaccounted for as her act shows lack of diligence. He further contended that, applicant failed to account for 248 days from 12th November, 2020 when she was supplied with correct copies to 26th July 2021 this application was preferred.

Mr. Nkuba went on to fault applicant's act of filling an application for extension of time to Lodge Notice of appeal without bother to apply for certificate on point of law at the same time for no apparent reasons. He claimed that, the requirement that the application for certificate on point of law has to be lodged after notice of appeal has been lodged does not preclude an application for extension of time to apply for certificate. To him, the wasted 248 days was supposed to be accounted for by the applicant but she failed. He concluded on this ground by submitting that, there is no good cause to warrant grant of extension of time.

Re-joining, Mr. Lugaila almost reiterated his submission in chief and argued that, the assertion by Mr. Nkuba that, late filling of certificate on point of law resulted from lack of diligence and sloppiness has no merit as respondent acknowledges how the applicant took necessary measures to make sure the errors committed were rectified, and how she brought the present application diligently and promptly. He added, to further prove that acknowledgment the respondent did not even reply to the cited Rules 46 (1) 83 (2) and 83(4) of the Court of Appeal Rules connoting that, he is aware of the requirements that, it was technically impossible for the applicant to apply for certificate on point of law on time without undergoing all the procedures she went through.

I have taken time to exhaustively examine and consider the affidavit, counter affidavit and submissions for and against this Application. The issue for determination by this Court remains as alluded to above whether the applicant has advanced good cause/sufficient reasons to warrant this court to grant her extension of time. It is uncontroverted fact that under section 11 of AJA this court has unfettered power to grant the applicant the sought prayer upon good cause shown. There is no hard and fast rule as what amounts to good cause, since it depends on the materials advanced by the

applicant to account for the delay including any reasonable reason that prevented to applicant from pursuing his action within reasonable time. See the cases of **Benedict Mumelo Vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, **Regional Manager, Tanroads Kagera Vs. Ruaha concrete Company Ltd**, Civil Application No 96 of 2007, **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 and **Jumanne Hassan Bilingi Vs. Republic**, Criminal Application No. 23 of 2013 (CAT-unreported), to mention few. In the case of **Benedict Mumelo** (supra) the Court of Appeal held thus:

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.

Also in the case of **Jumanne Hassan Bilingi** (supra) on what amounts to good cause the Court of Appeal stated as follows:

*"...what amounts to good cause is upon the discretion of the Court and it differs from case to case. But basically **various judicial pronouncements defined good cause to mean reasonable cause which prevented the applicant from***

pursuing his action within the prescribed time.”

(Emphasis added).

It is also a trite law that, when the doctrine of technical delay is introduced and established by the applicant, such delay is excusable and constitutes sufficient reason for granting the prayed extension of time. See the case of **Fortunatus Masha Vs. William Shija & Another** [1997] TLR. 154.

In this application, applicant has explained in extensor on how she was at all time in corridors of this temple of justice, trying to pursue her right but she was delayed due to technical delay until when she lastly received the copy of Notice of Appeal duly signed by the Registrar on 14/07/2021. To the contrary Mr. Nkuba, says she lacked diligence as for wasting time when filed the application for extension of time to file the Notice of Appeal separately in which she could have accompanied the prayer made in this application for extension of time to file an application for certification that point of law involved in the impugned decision, hence wasted more than 248 days from 12th November 2020 when supplied with the corrected documents to 19th July 2021. I do not subscribe to Mr. Nkuba's assertion as application for extension to apply for certificate on point of law could not be made before

lodging the Notice of appeal as per the requirement under Rule 46(1) of Court of Appeal Rules of 2009. Rule 46(1) of the Rules provides that:

46.-(1) *Where an application for a certificate or for leave is necessary, **it shall be** made after the notice of appeal is lodged.*

In light of the above mandatory requirement and given the fact that the impugned judgment and decree sought to be challenged by the applicant had errors of names which rendered even the first filed Notice of Appeal, I am satisfied that, it was necessary for the applicant to undergo all the procedures she went through to rectify the documents and refile the Notice of Appeal before bring the present application and prayer under consideration. Further to that, since there is evidence (annexure US.7 to the affidavit) that, the said signed Notice of Appeal by the Applicant was served to the respondent on 14/07/2021, I hold the applicant's act of applying for rectification of records of appeal (judgment, decree and proceedings), filing of fresh notice which was supplied to her on 14/07/2021 after obtaining Registrar's signature amounted to technical delay, therefore time from 09/04/2020 when the impugned ruling was delivered to 14/07/2021 is

excluded from being reckoned. Now since this application was filed on 26th July 2021, 12 days after the date in which the applicant obtained the signed copy of Notice to the Registrar which was duly served to the respondent on the same date, she has to account for 12 days of delay, as the law requires each day of delay to be accounted for with sufficient reason or good cause. See the case of **Benedict Mumello vs. Bank of Tanzania**, (Supra) and **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007 (CAT-unreported). In **Bushiri Hassan** (supra) Court stated thus:

"Delay, even a single day, has to be accounted for, otherwise there would be no meaning of having rules prescribing periods within which certain steps have to be taken..."

In this matter the applicant neither accounted the 12 delayed days from when he was served with the signed copies of notice of appeal to the time of filing this application nor did she establish the alleged serious point of law that needs attention of the higher Court. As the delay of 12 days is inordinate, the omission to account for them justifies this court to hold that, the applicant has failed to establish good cause for this court to grant her prayer sought. The prayer for extension of time within which to file the

application for certification that point of law are involved in the decision in PC. Civil Appeal No. 367 of 2021 is without merit and I dismiss it.

In the upshot, since the second prayer is subjected to grant of the first prayer which is already dismissed, I find the second prayer in the application is incompetent before the court and the same is hereby struck out.

Given the nature of this case, no order as to cost.

It is so ordered.

DATED at Dar Es Salaam this 24th day of June, 2022



E. E. KAKOLAKI

JUDGE

24/06/2022.

The Ruling has been delivered at Dar es Salaam today on 24th day of June, 2022 in the presence of the applicant in person, Mr. Shiza A. John, advocate for the Respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

24/06/2022

