

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISC CIVIL APPLICATION NO. 588 OF 2023**

**(Originating from Misc. Civil Application No. 293 of 2019 of the  
Ilala District Court at kinyerezi )**

**TACAS LTD..... APPLICANT**

**VERSUS**

**COMMERCIAL BANK OF AFRICA(T).....RESPONDENT**

**RULING**

*14<sup>th</sup> February & 17<sup>th</sup> March 2023*

**MKWIZU, J:**

This is an application for the enlargement of time within which to file an appeal to this court against the decision of Lukumai RM in Misc. Civil Application No. 293 of 2019 dated 21<sup>st</sup> August 2020. It is made by way of a Chambers Summons preferred under section 14 (1) of the law of Limitation Act, (Cap 89 RE 2019) and section 95 of the Civil Procedure Code (Cap 33 RE 2019) supported by the affidavit of Bitamo Marco, the applicant, advocate. The application is contested by the respondent through a duly filed counter affidavit.

By consent of the parties, the application was argued by written submissions. The applicant was represented by Mr. Bitamo Marco learned advocate while Mr. Zuriel Kazungu was for the respondent.

Submitting in support of the application, the applicant's advocate said, after the delivery of the judgment, they requested a copy of the ruling and found it with errors, that name of the respondent was not written in full, the ruling was signed by two magistrates without reasons prompting for another request for correction of the errors and service on them with a correct copy of the ruling. They made several follow-ups until 26<sup>th</sup> Sept 2022 when parties were summoned to appear before the court and finally, a correct copy of the ruling was delivered on 11<sup>th</sup> November 2022.

The counsel submitted further that after that correction, he fell sick and needed medical attention until 20<sup>th</sup> December 2022 when he filled out this application for an extension of time. On why this application was filed on 20<sup>th</sup> December 2022, the applicant's counsel said, it is because by then two advocates, presumably in his chamber, had resigned.

He insisted that the application is based on the right to be heard under Article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977 claiming that she was denied a right to be heard, as the matter was not determined on merits.

In response to the applicant's submissions, the respondent's counsel first adopted the counter affidavit in opposition with additional submissions that the application is unfounded, misconceived, and devoid of merits. His contention was that the rules of extension of time are obvious that the applicant must show sufficient cause, in the cause of which she must account for each day of the delay, the delay should not be inordinate and as such prove that there was not any sort of negligence on the part of the applicant.

He submitted further that the impugned decision was delivered on 21<sup>st</sup> August 2020 and The Applicant's allegation that he had on 18th September 2020 written a letter requesting a copy of the said ruling is without proof. That the applicant's affidavit is silent on when he received the said ruling after his letter dated 18th Sept 2020, and when exactly she noticed the alleged defect in the ruling so as to clearly account for the delay. The respondent's counsel is of the view that the non-disclosure of that essential information in the affidavit is a clear indication of hidden negligence on the part of the applicant purposely made to mislead the court.

Mr. Zuriel stated further that the allegations that, by the time the Applicant was filing the instant application, two advocates in the Firm engaged to prosecute the application had resigned, are allegations from the bar. No such deposition was made in the Applicant's affidavit, rather an afterthought that cannot be acted upon by the court. He invited the court to draw an inference that, the sickness of one advocate in a firm having more than one advocate should not be an excuse for failure to appeal within the time. He supported his submission by the case of **Esio Nyomolelo and Anor v/s Republic**, Criminal Application No. 11 OF 2015, cat AT Dar es salaam (unreported), at Page 3, it was held thus;

*" The applicant is required to show and explain what prevented him from lodging his/her application within the prescribed time. In so doing, the applicant has to account for every day of delay caused by him in his affidavit"*

Respondent's counsel also attacked the applicant's assertions that the application for extension of time to appeal, was preferred before the expiry of the time within which an appeal was to be filed, as an afterthought as the same has not been stated in the Applicant's affidavit and therefore unworthy to be acted upon by the court. Reliance was also made to the decision in **Republic v/s Sumni Ama Aweda**, Criminal Application No. 65/02 OF 2020, CAT, at Arusha (Unreported). And **Ricahrd Mchau vs Shabir F. Abdulhussein**, Civil Application NO. 87 of 2008; CAT, at Dar es Salaam, (unreported) where the Court of Appeal held that:

*"It is our considered view that if the applicant was served out of time, he would not have failed to raise such an alarm in the affidavit. Having not done so, we think, the respondent's contention to effect that the applicant's assertion is an afterthought holds a lot of water"*

**Mr. Zuriel** stressed that since the alleged impugned ruling was delivered on 20<sup>th</sup> August 2020, the alleged 90 days expired on 21<sup>st</sup> October 2020. The application was filed long after the expiry of the time to appeal and therefore the Applicant was strictly liable to account for all the days from 21<sup>st</sup> October 2020 to 20<sup>th</sup> December 2022, being the date of filing this application, which is two years delay.

Submitting on the issue of a right to be heard, he said though fundamental, that right is not absolute. Since the Applicant's non-appearance was due to her own negligence, she cannot plead the right to be heard to rescue him from the mess. He insisted that the Applicant

has failed to account for each day of delay, for all the days from 21<sup>st</sup> October 2020 to 20<sup>th</sup> December 2022 being the date of filing this application, that the delay is inordinate and is due to the Applicant's own negligence and therefore the application should be dismissed with costs.

The applicant's rejoinder is basically a reiteration of his submissions in chief with a prayer to have the application granted.

I have subjected the application and parties' submissions to serious scrutiny. There is no dispute that the trial court's decision was delivered on 29/8/2020 which is appealable within 90 days period from the date of the decision. Section 4, 6, and 19 of the Law of Limitation Act recognizes the date of the decision as the commencement of the time of limitation with the exclusion of the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed. These provisions provide for two circumstances on which time may be calculated.

The first scenario envisages the circumstances where there is no problem with obtaining copies of the decision to be appealed against when the party would need to start counting the days for purposes of the limitation period from the date of the decision. The second scenario is where a party spends some days in obtaining the requisite copies of the decision and the counting begins only after service on him /her the requisite copy by the court. This second situation in most cases requires evidence to establish what prevented one to take action promptly. This is where, in my view, section 14 of the Law of the limitation Act cited by the applicant's

counsel comes in to avail a party chance to justify the delay by giving sufficient cause. The section says:

*"14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*(*emphasis added*)

And the provision above is very specific that the extension of time may be sought either before or after the expiration of the prescribed time. What is important in any such application, is for the applicant to give **sufficient reason for the delay**.

And what amounts to "sufficient cause" is not defined. It is based on the discretion of the Court which in most cases depends on the circumstances of the case which are to be determined judiciously. From decided cases, a number of factors have been taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, and lack of diligence on the part of the applicant including the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), where the Court expounded the following principles to be taken into consideration when considering extending time:

*"1. That, the applicant must account for all the periods of delay.*

*2. The delay should not be inordinate.*

*3. The applicant must show diligence/and not apathy' negligence or sloppiness in the prosecution of the action that he intends to take.*

*4. If the Court feels that there is 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."*

To begin with, the applicant's submissions that the application was filed before the expiration of the time and therefore need not account for the delay. As rightly submitted by the respondent counsel, this fact was to first be deposed in the supporting affidavit. It is a mere statement from the bar brought belatedly to the court through written submissions without the support of the sworn evidence in the affidavit. Faced with a similar situation, the Court of Appeal in the case **Republic v/s Sumni Ama Aweda**, (Supra) cited by the respondent counsel observed:

*"The learned State Attorney needs to be reminded that affidavits which are statements made on oath are the basis upon which applications are decided. Any statement not raised in the affidavit is always disregarded as a mere statement from the bar..."*  
*(Emphasis added)*

After all, in any application for an extension of time, whether filed before or after the expiration of time needs no more than a plausible reason for the delay. Thus, the submissions by the applicant's counsel that the accounting of the delay was not necessary because the application was

filed before the expiration of the time for limitation is a misconception of the law.

The application contains two grounds for the delay, delay by the court in supplying a correct copy of the ruling to the applicant, and sickness of the applicant's counsel. Speaking of the late service on the applicant of the correct copy of the ruling, it is submitted that, immediately after the ruling, on the 18<sup>th</sup> day of September 2020 the applicant successfully wrote a letter to the court requesting for a copy of the ruling for appealing purposes. But the copy that was supplied to her had errors in the respondent's name with the signature of two magistrates without reason. The learned advocate contended that the applicant had to again request for the correction of errors which was completed by 11<sup>th</sup> November 2022.

It is as explained by Mr. Zuriel, counsel for the respondent that after the decision in Civil Application No. 293 of 2019 was handed down, the applicant ought to have filed the appeal within 90 days after service on her of the copy of the ruling. But as admitted by the applicant's counsel there was no filed appeal, and this application was filed on 20<sup>th</sup> December 2022. The applicant's affidavit and submissions suggest that there was a timely service on her, an incorrect copy of the ruling by the court. However, apart from his request to be supplied with the said ruling dated 18/9/2020, the second letter after her first letter requesting copies of the ruling was filed in the District Court on 5/3/2021 without explanation as to when the incorrect copy was served upon the applicant and when exactly the pointed out errors were detected so as to allow the court to absolve her from the said delay.



I understand that the sickness of the applicant's counsel was also deposed as a reason for the extension of time. This reason however was able to justify the period between 8<sup>th</sup> November to 15<sup>th</sup> December 2022.

The rest of the explained events leaves almost six months period from 18/9/2020 to 4<sup>th</sup> March 2021 unaccounted for. It is trite law that in an application for an extension of time, each day of the delay must be accounted for. In **Bushire Hassan v Latina Lucia Masaya**, Civil Application No. 3 of 2007 (unreported) the Court of Appeal held :

*"Delay of 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."*

See also **Yazid Kassim Mbakileki v. CRDB (1996) LTD Bukoba Branch and Another**, Civil Application No. 412/04 of 2018).

The applicant was in this application required to disclose to the court the date of each action taken from when she lodged to the district court her letter requesting copies of the ruling, to the date of the filing of this application to assist the court in determining the party's diligence in the pursuit of the matter, and whether the applicant acted expeditiously. I am on this supported by the decision of the Court of Appeal in **Karibu Textile Mills Limited versus Commissioner General, Tanzania Revenue Authority**, Civil Reference No. 21 of 2019 where it was held:

*"With respect, we think that, despite the phrase "good cause" under Rule 10 of the Rules requiring a lesser degree of proof it is too plain for argument that an applicant for enlargement of time under the aforesaid rule must account for each day of*

*the delay involved so as to allow the Court to determine the degree of the delay involved, the party's diligence in the pursuit of the matter, the soundness of the reason for the delay as well as whether the applicant acted expeditiously."*

This wasn't done in this application leaving the court without sufficient details warranting the grant of the application.

In upshot and for the foregoing reasons I hold that the application lacks merits and it is hereby dismissed in its entirety with costs.

**Dated at DAR ES SALAAM this 17<sup>th</sup> day of MARCH 2023**



**E.Y Mkwizu  
JUDGE  
17/3/2023**

Court: Right of Appeal explained



**E.Y Mkwizu  
JUDGE  
17/3/2023**