

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 47/01 OF 2021

USANGU LOGISTICS (T) LIMITED APPLICANT

VERSUS

SODETRA SPRL LIMITED..... RESPONDENT

**[Application for extension of time to apply for restoration of Civil Appeal
No. 100 of 2012 dismissed by the Court (Luanda, Mmilla and Ndika, JJA.)
on 20th day of October, 2020]**

.....

RULING

26th September, 2022 & 28th April, 2023

MWARIJA, J.A.:

By a notice of motion lodged on 26/2/2021, the applicant, Usangu Logistics (T) Limited has moved the Court for an order granting it extension of time to apply for restoration of Civil Appeal No. 100 of 2012 which was dismissed by the Court on 12/3/2018 for the applicant's failure to appear when the appeal was called on for hearing on the said date.

After dismissal of the appeal, the applicant instituted Civil Application No. 113/01 of 2018 seeking restoration of the dismissed appeal. The respondent countered that application by raising a preliminary objection to the effect that, the same was filed out of time.

The applicant conceded to the preliminary objection and consequently, the application was struck out hence this application for extension of time. The application, which has been brought under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), is supported by an affidavit affirmed by Ibrahim Ismail, the Managing Director of the company.

On its part, the respondent, Sodetra SPRL Limited, opposed the application through an affidavit in reply sworn by Lewis Karl Ruhiza, the Managing Director of the respondent company.

When the application was called on for hearing, the applicant was represented by Mr. Fikiri Liganga, learned counsel while the respondent had the services of Mr. Erasmus Buberwa, also learned counsel. The applicant did not file written submissions as required by Rule 106 (1) of the Rules and therefore, the learned counsel for the parties presented their arguments in support of and in opposition of the application orally in terms of Rule 106 (10) (b) of the Rules.

Submitting in support of the application, Mr. Liganga argued that, the delay in filing an application for restoration of the dismissed appeal was due to indisposition of the Managing Director of the applicant company who was sick at the time when the appeal was dismissed. As

a result of his sickness, Mr. Liganga went on to submit, the process of engagement of an advocate and payment of his fees had to await the recovery of the said Director. The learned counsel relied on paragraphs 5 and 6 of the supporting affidavit. In those paragraphs the deponent states:

"5. That after the Civil Application No. 113/01 of 2018 was struck out on the 20th October, 2020, our lawyer wrote to inform the applicant about the results of the court session on 20th October, 2020, and requested to know if he can proceed with the filing of application for extension of time after agreeing on requisite fees. At this time, I, as the Managing Director of the applicant, was seriously sick and hospitalized at Arapha Charitable Hospital located in Ubungo to the extent that I could not discuss any serious matter due to sickness.

6. That when I felt relieved from illness around early February 2021, I was able to contact our lawyer about handling this case. After successful negotiations, our lawyer sent us an invoice and the process of payment proceeded on 16th February, 2021. After all these, the applicant gave a go ahead to our lawyer to file this application."

According to Mr. Liganga, the reasons stated in the two paragraphs of the supporting affidavit reproduced above, constitute

sufficient cause and thus entitles the applicant to be granted the sought order. He added that, after payment of legal fees on 16/2/2021, he spent a period of eight days to prepare this application which was filed on 26/2/2021.

In reply, Mr. Buberwa argued that, the delay in filing the application was due to the inaction on the part of the applicant. He disputed the contention that, no action could be taken because of sickness of the Director of the applicant company. He relied on paragraph 10 of the affidavit in reply in which, the deponent avers as follows:

"10. That in addition to paragraph 5 above, I state that the sickness of the Managing Director of being hospitalized at the hospital does not serve any purpose apart from contradictions. I also state that the deponent being a Managing Director does not run the applicant on his own."

The learned counsel for the respondent challenged the attached medical chits (Patient Cards) contending that, apart from containing contradictory statements, the same cannot be validly acted upon to account for the whole period of the delay. It was Mr. Buberwa's arguments, **first**, that the document does not show that the Director of the applicant company was excused from duty, **secondly**, that he is

shown to have become sick after over four months from the date of dismissal of the appeal, **thirdly**, that, as the documents show, he was attending treatment at the Dispensary periodically between 18/10/2020 and 16/12/2020 meaning that, he was not admitted and **fourthly**, that from the expiry of the period of seven days within which he was required to rest, that is to say, between 16/12/2020 and 23/12/2020, the subsequent period from that date until on 26/2/2021 when the application was filed, has not been accounted.

On the contention that the period of eight days was spent in the preparation of the application, Mr. Buberwa argued that, such contention is not born out by the supporting affidavit. Citing the case of **Rosemary Stella Chambe Jairo v. David Kitundu Jairo**, Civil Reference No. 6 of 2018 (unreported), the learned counsel urged the Court to find the contention to be a bare statement which is uncreditworthy.

In rejoinder, although Mr. Liganga conceded that the medical chits (annexture AN4) are not signed by the medical personnel who purportedly wrote them, the learned counsel insisted that the delay was due to the sickness of the Director of the applicant company and thus urged the Court to grant the application.

From the affidavit of the applicant and the submissions made in support of the application, the cause of the delay in filing the intended application for restoration of the dismissed appeal, is sickness of the Director of the applicant company. According annexure AN4, the said Director was attending medical treatment between 18/10/2020 and 16/12/2020. It is shown also in paragraph 6 of the affidavit that, after his recovery, on 16/2/2021 he instructed his lawyer to apply for extension of time hence this application which was filed on 26/2/2021. Mr. Buberwa opposed the contention that the reason relied upon by the applicant constitutes sufficient cause for the delay. The issue for determination is, therefore, whether or not the delay was due to sufficient cause.

It is trite that, for an application of this nature to be granted, the applicant must account for every day of the delay. In the case of **Hemed Ramadhani and 15 Others v. Tanzania Harbours Authority**, Civil Appeal No. 63 of 2001 (unreported) in which the appellants were late for two days in filing their appeal, the Court held that:

"... delay, of even one day renders a matter incompetent. In the light of the above considerations,

*we find that the appeal by Hemed Ramadhani & 15
Others is time barred”*

- See also the case of **AMI (TANZANIA) Limited v. OTTU on behalf of P.L. Assenga & 106 Others**, Civil Appeal No. 54 of 2008 (unreported).

In the present case, it is not disputed that, whereas the appeal which is the subject matter of this application was dismissed on 12/3/2018, this application was filed on 26/2/2021, after a period of 1,082 days from the date of dismissal of the appeal. Under Rule 112 (3) of the Rules, the application ought to have been instituted within 30 days of the date of the dismissal of the appeal. The application for restoration of the appeal which was filed after the dismissal of the appeal was struck out by the Court on 20/10/2020 for being incompetent.

That application was not struck out with leave to refile and therefore, the period of its existence in the Court is not excludable in competing the period of limitation. Even if however, the position would have been to the contrary, the applicant was required to account for the period from the date when the said application was struck out to the date of filing the present application. The applicant has attempted to do so by relying on the unauthenticated annexure AN4 which, as stated

above, shows that the Director of the applicant company was undergoing medical treatment between 18/10/2020 and 16/12/2020, a period of 59 days.

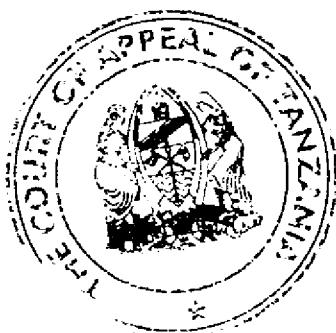
Assuming that the documents relied upon by the applicant to support its Director's sickness are authentic, which is not the case because they are neither certified nor signed, there is a remaining period of 129 days which ought to have been accounted. That has not been done. It is thus obvious that, the applicant has failed to show that the delay was due to sufficient cause.

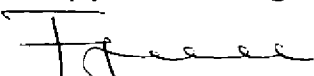
On the basis of the above stated reasons, I find that, this application is devoid of merit. In the result, the same is hereby dismissed with costs.

DATED at DAR ES SALAAM this 21st day of April, 2023.

A. G. MWARIJA
JUSTICE OF APPEAL

The Ruling delivered this 28th day of April, 2023 in the presence of Mr. Erasmus Buberwa, learned counsel for the applicant who also holding brief for Mr. Fikiri Liganga, learned counsel for the respondent, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL