

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

MISC. CIVIL APPLICATION NO. 53 OF 2021

STEVEN RAULIAN.....APPLICANT

VERSUS


**INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT**

RULING

3^d June & 17th June 2022

Kilekamajenga, J.

In 1995, the applicant, together with other five accused persons, was jointly charged with the offence of robbery with violence contrary to section 285 and 286 of the Penal Code. Before the trial court, the prosecution proved its case to the required standard and the applicant was convicted and finally sentence to serve thirty (30) years in prison. One of the convicts in that case, but not the applicant, appealed to the High Court and his appeal was successful. In 2004, the applicant and another convict called Alphonse Method appealed to this Court vide Criminal Appeal No. 11A of 2004. The appeal was decided in favour of Alphone Method. The appeal No. 11B which was preferred by the applicant was struck out for absence of notice of intention to appeal. The applicant was not tired of fighting for his rights, he preferred another appeal to this Court vide



Criminal Appeal No. 40 of 2010 which was successful and he was therefore released from prison on 27th August 2010. Ten years after his release, i.e. in 2020, the applicant sued the respondents claiming Tshs 120,000,000/= being damages for malicious prosecution and false imprisonment. He filed the suit in the High Court at Dar es salaam Registry. The respondents objected the suit for being time-barred and the same was consequently dismissed.

In 2021, the applicant appeared before this court seeking extension of time to allow him to file a plaint against the respondents. The application prayed for the following orders:

- (a) That this Honourable Court may be pleased to grant application (sic) for leave of extension of time to the applicant to file plaint in this Honourable court out of time against the whole judgment and proceeding in criminal case No. 64/1995 this said judgment delivered on 10/10/1995 before Hon. M.M.M. Mtimizi RM.*
- (b) Costs be provided for.*
- (c) Any other relief that this Honourable Court may deem fit to grant.*

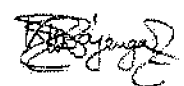
The application was made under **section 14(1) of the Law of Limitation Act, Cap. 89 RE 2019** and **section 93 of the Civil Procedure Code, Cap. 33 RE 2019**. The applicant supported the application with an affidavit which detailed the reasons for the delay. The court ordered the application to be disposed of by way of written submissions as it was requested by the applicant. In his written



submission, the applicant stated that, he wishes to challenge the criminal case No. 64 of 1995 hence he is seeking extension of time. He further alleged that he was sick and therefore delayed to lodge the intended appeal. Thereafter, there was no further reason advanced by the applicant to warrant the court enlarge the time.

The learned State Attorney responded by filing reply to the applicant's written submission. **First**, the learned State Attorney wondered why the application was brought under **section 14(1) of the Law of Limitation Act**, because that provision of the law is applicable where an applicant wishes to file an appeal or application out of time. **Second**, he argued that, the applicant has failed to advance reasonable cause for the delay. **Third**, the facts contained in the affidavit accompanying the application are different from the information contained in the application. The counsel urged the court to dismiss the application because the applicant intends to sue for malicious prosecution after the expiry of 12 years something which is contrary to the law. The learned counsel invited the court to consider the case of **Attorney General v. Twiga Paper Product Limited (2011) EA 16**.

In the rejoinder submission, the applicant insisted that, the delay was prompted by the sickness immediately after the release from prison.



In this application, the Court is called upon to decide whether the applicant has advanced sufficient cause for extension of time. Before discussing this pertinent issue, I wish to point out some few issues observed in the application. **First**, as stated earlier, the application was made under **section 14(1) of the Law of Limitation Act**, the section provides that:

*'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.'*

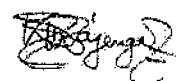
As long as the applicant seeks leave to institute a suit against the respondents for the claim based on malicious prosecution, the above provision is only applicable where the applicant seeks extension of time to file an appeal or application. Therefore, this provision of the law is irrelevant in moving this court to extent time in this matter. However, the applicant added another section to move this court. He invited the court to determine the application based on **section 93 of the Civil Procedure Code** thus:

93. Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

The above provision of the law is sufficient to move this court to enlarge time in this case.

Second, I have carefully read the application and the applicant's submission. It seems, the applicant is confusing between suing the respondents for the claim of malicious prosecution and challenging the decision made in 1995. The information contained in the affidavit and written submission suggests that, the applicant wishes to appeal against the decision made in criminal case No. 64 of 1995. The applicant is possibly not sure which direction to take. For the interest of justice however, this Honourable Court of justice will deal with the issue of extension of time even though haphazardly presented by the applicant.

In deciding whether the application has merit, the applicant must demonstrate before the court that he/she had sufficient reason or good cause for the delay. Of course, it may not be easy to present a clear definition of what amounts to a sufficient cause for extension of time. Therefore, each case must be treated on its merit and other surrounding circumstances. A similar stance was taken in the case of **Zawadi Msemakweli v. NMB PLC, Civil Application No. 221/18/2018**, CAT at Dar es salaam (unreported) where the Court of Appeal of Tanzania reiterated that:

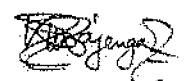


*'Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion...the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether applicant was diligent, **whether there is point of law of sufficient importance** (emphasis added) such as the illegality of the decision sought to be challenged and overall importance of complying with prescribed timelines.'*

It is therefore the discretion of the court to grant extension of time upon assessing several factors. However, the court is encourage to judiciously exercised this discretion as stated in the case of **Tanga Cement Co. v. Jumanne Masangwa and Another, Civil Appeal No. 6 of 2001** (unreported) that:

*This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors have been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of **diligence** on the part of the applicant'.*

Through case law, courts in Tanzania have tried to list some of the factors to warrant extension of time. However, I wish to insist, this is not an exhaustive list



as the court must exercise wisdom not to hinder the applicant's right to justice. In my view, in an application for extension of time, the most overriding fact is whether or not the rights of the applicant will be hindered if the application is denied. For that reason therefore, the court must go further determining whether the applicant's case is likely to succeed in case extension of time is granted. A similar principle of law was stated in the case of **Twiga Paper Product** (*supra*) that:

'Granting an extension under rule 8 is a matter for the discretion of the court and the applicant must put material and consideration before the which will persuade it to exercise its discretion if favour of an extension. The matters the court considers include the length of delay, the reason for the delay, the degree of prejudice to the respondent if the application is granted and possibly the chances of the appeal succeeding if the application is granted. Although the discretion is unfettered it must be exercised on reason not caprice and not in an arbitrary or oppressive manner.'

The Court went on stating that:

'There has been inordinate delay in bringing the application without any satisfactory explanation. It is not enough to barely say that it is in the interests of justice for extension of time to be granted. There must be some explanation on what this means.'

Furthermore, in 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), which is quoted with approval in the case of **Bishop Roman Catholic v. Casmir Richard Shemkai**, Civil Application No. 507/12 of 2017, CAT at Tanga (unreported), the Court listed some of the factors which may amount to sufficient cause thus:

1. *That, the applicant must account for all period of delay.*
2. *The delay should 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 are other reasons, such as the existence of a point of law of sufficient importance, such as illegality on the decision sought to be challenged* (emphasis added).

In the case at hand, what seems to be evident is, the applicant was released from prison in 2010. Thereafter, he started negotiations with the Ministry before filing the suit in 2020. It is hard to believe whether the negotiations took almost ten years before filing the suit. However, it is already an established principle of the law that prior negotiations before filing a case do not halt the counting the time for limitation. In the case of **Makamba Kigome and another v. Ubungo Farm Implements Limited and PRSC**, Civil Case No. 109 of 2005 (unreported) which was quoted with approval in the case of **M/S P & O**

International Ltd v. The Trustees of Tanzania National Parks (TANAPA),

Civil Appeal No. 265 of 2020, CAT at Tanga (unreported) stated that:

'Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time.'

Also, the same stance was stated in the case of **M/S. P & O International Ltd** (*supra*) thus:

'It is trite that pre-court action negotiations have never been a ground for stopping the running of time.'

What may be gleaned from the above principle of the law is that, if pre-court negotiations do not count in assessing time limit for the suit, such negotiations may also not amount to sufficient cause for the delay. Furthermore, the applicant alleged that he felt sick soon after his release from prison. However, all the documents attached to the application show that he was sick in 2017 up to 2021 after being involved in an accident. By that time, he had spent almost seven years after he was released from prison. I generally find no sufficient cause or



good reason to warrant the extension of time. I hereby dismiss the application.

Every part should bear his/her own costs of this application.

DATED at **BUKOB**A this 17th day of June, 2021.



A handwritten signature in blue ink, appearing to read "Ntemi N. Kilekamajenga".

Ntemi N. Kilekamajenga.

JUDGE

17/06/2022

Court:

Ruling delivered this 17th June 2022 in the presence of the learned State Attorney, Mr. Lameck Butuntu and the applicant present in person. Right of appeal explained.



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Ntemi N. Kilekamajenga.

JUDGE

17/06/2022

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