

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 561 OF 2018**

*(Originating from Civil Case No. 30 of 2017 Resident  
Magistrate's Court of Dar es Salaam at Kisutu)*

**HILDA MATO SIGIRA.....APPLICANT**

**VERSUS**

**THE SURFACE & MARINE TRANSPORT**

**REGULATORY AUTHORITY (SUMATRA).....RESPONDENT**

**RULING**

*Date of last order: 8/7/2021*

*Date of Ruling: 31/12/2021*

**S.M. KULITA J;**

This is a ruling for an application for extension of time to appeal out of time, brought under section 14(1) of the Law of Limitation Act, Cap 89 RE 2002 and Section 95 of the Civil Procedure Code, Cap 33 RE 2002. It is accompanied with a chamber summons and the affidavit sworn by the applicant's counsel Mr. Alex Charles Advocate. In his pleading the applicant seeks for this court extend time for him to file appeal out of time against the

judgment and decree of Civil Case No. 30 of 2017 of Kisumu Resident Magistrate's Court.

The matter was disposed of by way of written submissions. Mr. Alex Charles, Advocate appeared for the applicant while the Respondent, SUMATRA was represented by Ms. Monica Simbo, Advocate.

Submitting on the cause of delay, Mr. Charles explained that it was attributed by the trial court's failure to supply the copies of the judgment and decree in time. He said that those documents were supplied to the applicant after the lapse of the prescribed time of appeal, that is 90 days period. The Counsel submitted that the applicant has been diligent by making several follow ups to get the copies of the impugned decision. He said that it was beyond his control to secure the said copies in time. The counsel submitted that, that is sufficient ground for extension of time.

Mr. Charles further submitted that after obtaining the copies of the impugned decision on the afore mentioned date, he could have not prepared the appeal immediately as he had gone to attend the TLS meeting at Arusha from 13/9/2018 to 15/9/2018 and he was alone in the office.

Replying the applicant's submissions Ms. Simbo submitted that for the application of extension of time to succeed the applicant must advance reasonable cause of delay and account on each

day of delay. Relying on those said principles, Ms. Simbo was of the opinion that the applicant's demonstration on the cause of delay exhibits negligence, he also failed to account for each day of delay for a total of 290 days since the decision was delivered. She said that for those faults on the part of the applicant the application must fail. To support her argument, she cited the cases of **Martha Khotwe vs Miston Mwanjamila, Civil Application No. 5 of 2014, CAT at Mbeya (unreported)** and **Bruno Wenceslaus Nyalifa vs The Permanent Secretary of Home Affairs & Another, Civil Appeal No. 82 of 2017, CAT at Arusha (unreported)**.

Ms. Simbo submitted that although the applicant explained the cause of delay to file the appeal in time was the trial court's failure to supply the documents in time, but he has failed to account for the 20 days' delay upon receipt of the said copies. She submitted that the applicant was obliged to account was each day of delay on those 20 days. To support her argument, she cited the case of **Finca (T) Limited and Another vs. Boniface Mwalukisa, Civil Application No. 589 of 2018, CAT at Iringa (unreported)**.

Ms. Simbo concluded her submission by stating that the application has no merit, hence the court should dismiss the same.

In his brief rejoinder Mr. Charles maintained what he had stated in his submitted in chief.

Having considered the submissions and affidavits of both parties, the issue for determination is whether the applicant has established sufficient cause for this court to warrant extension of time. It is evident that the applicant's counsel, Mr. Charles admitted that he received the copies of the impugned decision on 27<sup>th</sup> August, 2018, and this application was lodged before this court on the 19<sup>th</sup> September, 2018, that is after the lapse of 23 days period. Between 13/9/2018 and 15/9/2018 he was attending the official TLS meeting at Arusha. He contends that he was alone in the office hence there was nobody who could prepare the appeal documents.

Upon considering the fact that the documents were supplied to the applicant on the 27<sup>th</sup> August, 2018, excluding those three days, 13/9/2018 to 15/9/2018 of which he was attending the TLS meeting at Arusha, still the Advocate had number of days that he has not accounted for, from the date that they had been supplied with the copies of documents for appeal purposes. Had they (Applicant and/or his Advocate) been serious enough with the matter, the application could have been filed even before the Advocate had left for the meeting at Arusha. Worse enough, even after being back from there, still the Advocate stayed for

the other 4 days before he came to file this application on the 19<sup>th</sup> September 2018. Furthermore, the said Applicant's Counsel never provided to court any document to exhibit that he actually attended the meeting on those said dates.

The reasons advanced by the applicant's counsel are the justification for his negligence and sloppiness for not filing this application promptly upon receipt of the necessary copies for the decision sought to be challenged.

In short, the applicant's counsel has not accounted for each day of delay from the date he was supplied with the appeal documents, hence, failed to establish sufficient cause for this court grant the application.

Extension of time is entirely the discretion of the court upon the applicant showing sufficient reason for the court to do so. This was also the view of the Court of Appeal in the case of **Benedict Mumelo vs Bank of Tanzania, Civil Appeal No. 12 of 2002, CAT at DSM**, in which it was held;

*"An application for extension of time is entirely in the discretion of the court to grant or refuse it, and the extension of time may be granted where it has been sufficiently established that the delay was with sufficient cause"*

As the applicant has failed to establish sufficient reason for this court to exercise its discretion to warrant extension of time, I find this application with no merit, hence dismissed with costs.



*HR*

**S.M. KULITA**

**JUDGE**

**31/12/2021**