

**IN THE HIGH COURT OF TANZANIA
(IN THE SUB-REGISTRY OF MWANZA)
AT MWANZA**

CIVIL APPLICATION NO. 153 OF 2022

*(Arising from the Judgment of Magu District Court in Civil Appeal No. 4
of 2022 originating from Civil Case No. 18 of 2022 at Magu Urban
Primary Court)*

KULOLA KATWIGA.....APPLICANT

VERSUS

CHEREHANI MARKO.....RESPONDENT

RULING

Date of Last Order:15/03/2023

Date of Ruling:24/03/2023.

Kamana, J:

This Court is called upon to grant an extension of time within which to file an appeal. The impending appeal is against the decision of the Magu District Court in PC Civil Appeal No. 04 of 2022. The Applicant is aggrieved by the first appellate Magistrate's decision which upheld the trial Court's findings. The application is supported by the affidavits sworn by the Applicant and his advocate on which grounds of the application are based.

Delay in acquiring a copy of the judgment and failure to pay for online registration have been cited as the basis for the application. The Applicant avers that the decision of the District Court was delivered on 19th September 2022 and he was supplied with a copy of the judgment on 19th October 2022.

Hearing of the application took the form of oral submissions. The Applicant appeared in person and stated that his failure to file an appeal was caused by the failure of the District Court to supply him with a copy of the judgment on time. After acquiring the same he instructed his advocate to prepare the appeal. Thereafter he traveled to Manonga Village to attend to his brother who was sick, thereat, there was a network problem. Given that, his advocate failed to communicate with him regarding the payment of court fees. When he returned from attending to his brother, the control number for payment of court fees was overdue and the time limit also had lapsed. For these reasons, he prays for his application to be allowed.

In his rebuttal submission, the Respondent didn't have much to say, he urged this court to strike out the application as it is beyond the time limit.

From these rival arguments, the Court is called upon to determine whether the application has been made out to warrant the exercise of its discretion and grant an extension of time.

Before going into the merits or otherwise of this application, I wish to point out that, the contention by the Respondent that the application has been brought beyond the time limit is a misconception. I say so because it is trite law that applications for an extension of time do not have a time limitation. This position was emphasized in ***Tanzania Rent-a-Car Ltd v. Peter Kihumu***, CAT-Civil Application No. 226/01 of 2017 (DSM-unreported) in which it was held:

*'For reasons I have demonstrated above, I am of the view that the sixty days rule should apply in filing all other applications for which no time limit is prescribed except **in applications for extension of time.**'*
(Emphasis provided)

Having settled this issue, I now turn to the critical substance of the parties' contention. This relates to the sufficiency or otherwise of the reason for the Applicant's delay in filing an appeal to challenge the decision of the District Court of Magu.

In dealing with this matter, let it be clear that the impugned judgment sought to be challenged was delivered on 19th September

2022 and the current application was filed on 30th November 2022. This is to say 71 days had lapsed since the delivery of the judgment.

It is trite that extension of time can only be granted upon the party's presentation of a credible case sufficient to persuade the Court to grant it. Grant of extension of time is, therefore, at the discretion of the Court, and the process leading up to such grant requires the party in whose favor the order is sought to act equitably. Thus, the Supreme Court of Kenya made the following remarks in **Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others**, Sup. Ct. Application 16 of 2014:

'Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of courts which litigants have to lay a basis [for], where they seek [grant of it].'

In the decision of **Lyamuya Construction Company Limited v. Board of Trustees of YWCA**, Civil Application No. 2 of 2010. the Court of Appeal of Tanzania illustrated key conditions upon which the grant of extension of time should be based, and these conditions are as follows:

'(a) The Applicant must account for all the period of delay.'

(b)The delay should not be inordinate.

(c)The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.

(d)If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.'

The Applicant has cited two grounds on which the prayer for extension of time is premised. One, he had delayed filing the appeal because of the delay in obtaining copies of the judgment. Two, failure to pay court fees, and there was a miscommunication between him and his advocate in accomplishing online filing which led to the expiration of the control number. While the Respondent contends that the application has been brought out of time.

After going through the submissions made by both parties, I tend to disagree with the Applicant's averments because the law which governs petition of appeal for matters originating from the primary Court does not require a copy of the judgment to institute an appeal. This is per, Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1964 (G.N. No. 312 of 1964) which states thus:

*'Every petition of appeal to a district court from a decision or order of a primary court and every petition of appeal to the **high court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall set out precisely and under district heads numbered consecutively the grounds of objection** to the decision or order appealed against and shall be signed by the appellant or his agent.'*

This position of the law was well interpreted by the Court of Appeal in the case of **Sophia Mdee v. Andrew Mdee and 3 Others**, Civil Appeal No. 5 of 2015 where the Court stated that attachment of a copy of the judgment of the Primary Court when appealing to the High Court is not a prerequisite. The Court stated:

'Attaching petition of appeal with a copy of judgment is not a legal requirement in matters arising from Primary Court. Rather it is a legal requirement on matters originating from District Courts and Courts of Resident Magistrate as it is provided for under the Civil Procedure Code.'

Therefore, it is clear that the averments by the Applicant that the delay was caused by a delay in acquiring a copy of the judgment are baseless. The law is quite clear that ignorance of the law cannot be considered a good reason for the extension of time. This position was

stated in the case of ***Hamimu Hamisi Totoro @ Zungu Pablo and 2 Others vs The Republic***, Criminal Application No. 121 of 128 in which it was stated that:

'The issue here is whether ignorance of the law constitutes a good cause for an extension of time. There is a plethora of authorities to the effect that ignorance of the law has never been a good cause for granting an extension of time. For instance, in the case of Hadija Adam v. Godbless Tumba, Criminal Application No. 14 of 2013 (Unreported) the court stated as follows: 'as regards the Applicant's ignorance of law and its attendant rule of procedure, I wish to briefly observe that such ignorance has never been accepted as a sufficient reason (see for instance, Charles Machota Salugi v. Republic, Criminal application No. 3 of 2011 (Unreported)).'

In the foregoing, I find this reason for the delay is devoid of merits and I dismiss it. Lastly, the contentions that he has failed to pay court fees online and that there was a miscommunication between him and his counsel are also baseless since the same was intended to move this court to extend the time within which he could file his appeal out of time.

Consequently, and, in view of the foregoing, I find no merit in the application. Accordingly, I dismiss it with costs.

It is so ordered.

DATED at **MWANZA** this 24th day of March 2022.



A handwritten signature in blue ink, appearing to read "KS Kamana". The signature is fluid and cursive, with a large initial "K" and a long horizontal stroke at the end.

KS KAMANA

JUDGE