

TANZANIA / JUDGMENT

# Katarama Ruling

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF  
MWANZA AT MWANZA MISC. CIVIL APPLICATION NO. 17419 OF 2024 KATARAMA TOURIST  
HOTEL LTD ..... APPLICANT VERSUS

1. MANAGING DIRECTOR GPH INDUSTRIES LTD
2. DAVID GARETH HUGHES ..... RESPONDENTS
3. PRISCA JOSEPH MARIBA

## RULING

18th & 30th September, 2024 CHUMA, J. This ruling is in respect of the application for an extension of time to lodge a notice of appeal to the Court of Appeal against the decision of this Court by Hon. Kilekamajenga, J. in Misc. Application No. 88 of 2022. The application is preferred under section Section 11 (1) of the Appellate Jurisdiction Act, CAP. 141 R.E. 2019 (JALA) and Section 95 of Civil Procedure Code, Cap 33 R.E 2029 (CPC) supported by an accompanying affidavit of Simon Katarama. When the matter was called on for hearing, the applicant represented by Mr. Innocent Kisigiro, Advocate and Mr. Ondijo advocate appeared for the respondents. Submitting in support of the application Mr. Kisigiro Advocate for the applicant first prayed the filed affidavit, be adopted to form part of his 1 submission and court record. He went on to argue the reasons for the delay are due to the following, first, their option to file a revision to the Court of Appeal No. 965/08 of 2023, which was withdrawn on 8th day of May, 2024, and file an appeal. The applicant falls sick and is bedridden. He was admitted to Jakaya Kikwete Hospital and then to Canada and England. On his return, they started the appeal process. In their application there is a point at issue on illegality which needs determination by the Court of appeal, the trial Judge in Misc. Civil Application No. 88/2022 raised and determined an issue that was not their concern namely the status of parties instead of the issue of lifting corporate veil concern. This position was decided in the case of Principle Secretary, Ministry of Defence and National Service Vs. Devram Valambhia

[1992] TLR 387. This point alone suffices to warrant this court grant the sought order. The other point as earlier stated the applicant who ought to endorse the document for this application was sick and the process started on his return. This position was also held in the case of Hamis Macha Sancho Vs. Joyce Bachubila, Civil Application No. 487/17 of 2016

on pages 4 and 5. The issue of illness was considered by the court a fact which is also similar to the instant situation. 2 On technical delay, he invited this court to a case of Fortunatus Masha Vs. William Shija and Another [1997] TLR 154 where this matter was as well taken into account. He finally prayed the instant application to be allowed. In response, Mr. Ondijo's advocate submitted that the applicant failed to establish sufficient grounds for the grant of the sought prayer. The applicant via Mr. Kisigiro failed to demonstrate each day of delay. He invited this court to a case of Alois Magana@ Kipilipili Vs. Gidion Mwangosi Civil Application No. 204/06/of 2022 on page 6 third paragraph. It is a mandatory requirement for the applicant to account for each day of delay. Going by the applicant's affidavit the referred judgment of the High Court in paragraph five the same pronounced on 16 June,

2023. The applicant ought to lodge a notice of appeal within 30 days from the date of judgment ending on 16th day of July, 2023. The reasons given by the applicant i.e. illness in particular as per paragraph 6 are not reflected on whether between those 30 days the applicant was sick. The applicant's annexed report from the hospital indicates that he went for a medical examination on 3 November, 2023 by then the time to lodge notice was ready expired. For that reason, the applicant can not rely on this medical report. To support his submission he referred this court to the case of Mohamed Kasobi Nyonga Vs. Azizi Magambo Rubale 3 Misc. Application No. 40/2022 HC Musoma on page 4 last paragraph. The sickness of the applicant does not cover the time the applicant ought to take necessary legal steps. On technical delay, the point is not stated anywhere in the applicants' affidavit hence a statement from the bar. To support his submission the case of Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania Civil Application No. 2/2010 on page 10. For that reason, no good cause was ever shown by the applicant for grant of the sought order. The third reason on illness leading to admission and travel outside the country for medication, again the affidavit is dead silent on his travel. Even if it were there the same ought to establish how much travel prevented him from filling his appeal by showing when he travelled to Canada, England, and back home to Tanzania for him to meet the criteria of accounting each day of delay. as per the case of Alois Magana (Supra) on page 5 second paragraph. The other ground is the issue of illegality. On this point, there is no illegality in the cited High Court decision. Paragraphs 7,8 and 11 pointed 4 out by the applicant are not points of law because they require evidence the case of Lyamuya (supra) is appropriate to justify or second his submission on page 10 second paragraph. Also, the case of Adolf Mfunya Vs. Juma Hereye and two Other Civil Application No. 33/2021 on page 8 last paragraph and page 9 last paragraph. The point of law is that which does not require long drawn argument to ascertain. Even if we take the position that the applicant at times went to the Court of Appeal via revision forum, Mr. Kisigiro is telling a lie because the same applicant who endorsed that document and at the same time is alleging that he was sick. Even though extension of time is a court discretion, the same must be exercised judiciously that is under the point of the law not of private opinion as it was held in Lyamuyas' case (supra) on page 6 third paragraph. For the above

submission, he prayed this application be dismissed for want of establishment of good cause by the applicant. In his brief rejoinder, Mr. Kisigiro's advocate at first retaliated his submission in chief and took into consideration the cited case because the same was never contested by Mr. Silvernus for the respondent. This court has the discretion to grant the sought order to meet the ends of justice. 5 On the illegality issue in paragraph 7 of the affidavit, the Trial Judge wrongly decided the issue that was not the party's concern. Regarding sickness issues after 8th May, 2024, the applicant was bedridden and went outside for treatment hence failed to proceed with a legal process. On that note, he insisted on his prayer to have the application granted without cost. Having considered the parties' submission for and against and after going through the court records along with the relevant laws, the court has found the issue to determine in this application is whether the applicant has established sufficient or good reasons for the delay in filing a notice of appeal in the court within the prescribed time. It is well known that where the intended appellant has failed to lodge the notice of appeal in the High Court within the time prescribed by the law the High Court is vested with power by section 11 (1) of the Appellate Jurisdiction Act to extend the time within which to file notice of appeal to the Court of Appeal, it is also a settled law that in any application for extension of time, the applicant is required to state sufficient cause for his delay. What amounts to sufficient or good cause has been discussed in a 6 range of cases including the Court of Appeal case of John Mosses and Three Others Vs. The Republic, Criminal Appeal No. 145 of 2006 where the position of the law stated in the case of Elias Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005 was quoted. The Court of Appeal stated "We need not belabour the fact that it is now settled law that in an application for an extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part". It was also stated by the Court of Appeal in the case of Blue Line Enterprises Ltd. Vs. East African Development Bank, Misc. Application No. 135 of 1995 (unreported) that: - "It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, 'upon sufficient cause being shown which has to be objectively assessed by Court.'" That being the position of the law concerning an application for an extension of time as required by the law the court has found the reason 7 advanced by the applicant to substantiate his delay was that; the first is a health problem, illegality and technical delay which I will not waste time discussing it as the referred withdrawn matter was as a result of the applicant's prayer to withdraw. Be that as it may, from the foregoing position of the law reasons for ill health being among the supervening event may amount or fall within the realm of good cause. The applicant via Mr. Kisigiro's advocate however did not strictly account for each day of delay for some days as rightly submitted by Mr. Ondijo's advocate for the respondent. But based on the historical background and nature of this matter and for the interest of justice, I take the submitted reasons as sufficiently justifiable that the applicant's delay is exceptionally excusable. In view of the above, it is my settled position that, the delay, in the circumstances of this

application is with good cause without venturing to the issue of illegality. My findings are backed up by the decision in the case of Yara Tanzania Limited (supra) where Kenyan cases of Savings and Loan Kenya Ltd. Vs. Onyacha Bwomonte, Civil Application No. 70 of 2004 and Belinda Murai & Others Vs. Amos Wainaina, Civil Application No. 9 of 1978, which were cited, in those cases the court held that the court should not keep the door of justice closed as the duty of the court is to dispense justice to the parties. This court has found that the applicant 8 advanced sufficient cause for this court to grant the sought order. In the event, the application is granted and the applicant is given fifteen (14) days from the date of this ruling to file in court the notice of intention to appeal to the Court of Appeal. Owing to the nature and circumstance of the instant application parties should bear their own cost. I so order. DATED at MWANZA this 30th day of September, 2024. W.M. CHUMA JUDGE 9 Ruling delivered in court virtually in attendance of Mr. Innocent Kisigiro, Advocate for the applicant and Kulwa Samson, Advocate for the respondents this 30th day of September 2024. W.M. CHUMA JUDGE 10

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