

TANZANIA / JUDGMENT

michael otom amolo vs washington benesius 2024 tzhc 94 24 january 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA DISTRICT REGISTRY AT MUSOMA MISC. CIVIL APPLICATION NO. 29 OF 2022 (Arising from the Decision of Musoma District Court in Civil Case No. 05 of 2019) BETWEEN MICHAEL OTOM AMOLO.....
APPLICANT VERSUS WASHINGTON BENESIUS..... RESPONDENT

RULING

06th December & 24th January, 2024 M. L. KOMBA, J.: The application at hand is for extension of time to appeal out of time against the decision of Musoma District Court (the trial court) in Civil Case No. 05 of 2019 which was allegedly to be delivered on 19th May, 2020. The application is premised under section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019] and is supported by an affidavit sworn by the applicant, MICHAEL OTOM AMOLO. Derived from the affidavit filed by the applicant, a brief background of the matter read as follows; That the applicant herein was the plaintiff in civil case No. 5 of 2020 which was ended in favour of the respondent. In the process of appeal, applicant discovered that the judgment had no date and Page 1 of 8 other anomalies wherefore he wrote a letter asking for correction. On appeal (Civil Appeal No. 36 of 2020) this court before Mkasimongwa, J. on 23 July, 2021 noted that judgment and decree had different dates ended up strike out for it being incompetent. Tirelessly applicant applied for correction of decree and the corrected copy was issued on 7th July 2022 and in August, 2022 this application was filed. During the hearing of the application, the applicant was represented by Ms. Mary Joakim, the learned advocate while the respondent stood solo, without representation. The counsel for applicant was the first to address this court that, the reason for delay in filing this application is technical; there was errors in judgment and decree which was to be corrected prior to this application as indicated in Civil Appeal No. 36 of 2021. On preparation to file the matter, counsel submitted that the applicant's wife fell sick and was admitted for three months. Applicant also fell sick and was under medication to the date of hearing. It was her further submission that reasons for later application are deponed in applicant's affidavit at paragraph 3 to 10 while noting that extension of time is court's discretion and prayed this court to utilise discretion wisely as applicant managed to account each day of delay. According to the counsel, there is a lot of precedent on the ground of sickness to be good cause for extension of time including Kapapa Kampindi vs. the Plant Manager Tanzania Page 2 of 8 Breweries Ltd, Civil Appeal No. 6 of 2010

and prayed her application to succeed with costs. Respondent who objected this application submitted that the applicant was negligent as the matter started at Primary court where he (respondent) was decree holder and appellant in most cases he appealed out of time. It was his submission that applicant delayed in making follow up of correction of judgment and decree. It was his observation that the assertion by the applicant that his wife was sick and was admitted for three months at village dispensary was not calling as the village dispensary cannot admitted a patient for that long without referral to higher level dispensary/ hospital regardless that there is no admission neither discharge form of the said patient. Respondent further complained and submitted that he doesn't find reasons why applicant did not allow his second wife to represent him in this application while she has power of Attorney to handle her husband case as she used in lower court. Insisting on negligence of the applicant, respondent submitted that the wife of the applicant was admitted on 01/08/2021 and was discharged on 09/08/2021 but he wrote a request letter for correction to Magistrate on 28/04/2022 almost eight months lapsed since he was discharged. He said other records of Kamanga on 18/10/2021 and Bugando 20/10/2021 shows Page 3 of 8 he was in good health and to him, the applicant was healed since he was discharged from DDH hospital, Serengeti. He prayed this court to dismiss the application. During rejoinder, counsel for the applicant submitted that there is no negligent rather errors on judgment and decree and insisted that the applicant was sick and his first wife too. Elaborating on Power of Attorney she acknowledges that the second wife had Power of Attorney but was for specific case which was finally determined. Having considered the application's records and the submission advanced by each party, the duty of this Court lies to consider whether or not this application is meritorious. It is trite law that whenever any part seeks for extension of time to file an application or appeal out of time, he/she must advance the sufficient reason (s) that the court can consider it before granting the same. As the matter of fact, there is no decisive definition of what a sufficient/good cause is , however, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against Page 4 of 8 the interests of a party who has a constitutionally underpinned right of appeal. See Jaliya Felix Rutaiwa vs Kalokora Bwisha & Another, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, Oswald Masatu Mwizarubi vs Tanzania Processing Ltd, Civil Application No. 13 of 2010, Paradise Holiday Resort Limited vs Theodore N. Lyimo, Civil Application No. 435/01 of 2018, CAT at Dar es Salaam and Ludger Bernard Nyoni vs National Housing Corporation, Civil Application No. 372/01/2018, CAT at Dar es Salaam (Unreported). The term reasonable or sufficient cause therefore is a relative one and is dependent upon party seeking enlargement of time to provide relevant materials in order to move the court to exercise its discretionary mandate in his favor. However, the Court, in my opinion, has produced two (2) criteria on the subject to assist judges and magistrates in resolving disputes of this nature, namely: first, promptness of the applicant after becoming aware that he is out of time (see: Dar es Salaam City Council vs Jayantilal P. Rajani, Civil Application No. 27 of 1987 ; Royal Insurance Tanzania Limited vs Kiwengwa Strand Hotel Limited, Civil Application No. 116 of 2008); and second, accountability on every day of the delay (see: Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007). Page 5 of 8

Further, inordinate delay or negligence on part of applicants for enlargement of time or their learned counsels is discouraged by our superior court (see: Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010). It was resolved so to avoid applicants who file their application as and when they so wish (Bank of Tanzania vs Said Malinda & 30 Others, Civil Ref. 3 of 2014). In the present application, the applicant has registered two relevant materials, namely: first, sickness of himself and his first wife; and second, error in judgment and decree. The first reason on sickness has already been identified as one of the pigeon holes in applications for enlargement of time. There is a large bundle of precedents in support of the pigeon hole (see: Magreth Makuba vs Nisile Ernest (supra); Sweetbert Ndebea vs Nestory Tigwera, Civil Application No. 3 of 2019; Kapapa Kumpindi vs The Plant Manager, Tanzania Breweries Limited (Supra); Benezeth Mwebesi & Two Others vs Baraka Peter, Misc. Civil Application No. 46 of 2019; and Safina Amri vs George Ruhinda, Misc. Land Application No. 66 of 2018) Page 6 of 8 At his 7th paragraph applicant explained while making a follow up of the correction of the judgment and decree following this court ruling (23/ 07/2021) his wife fall sick without mentioning exactly date(s). He proceeded to depone at paragraph 8 that due to the sickness of his wife he the applicant also fell sick (heart attack) and he was hospitalize on 01

- 09 August 2021 and then he has to attend clinic on 18/10/2021 and 20/10/2021. As per paragraph 9 he wrote a letter to District Court asking for correction of errors on 28/04/2022 which was responded on 07/06/2022 hence this application. There is no doubt that sickness has been good and sufficient ground for extension of time but the issue to consider was the applicant acted promptly after his discharge or after the visit to hospital? The record shows after he visited several hospitals he was observed to be fit as per Bugando Medical Centre report (no significant abnormality visualized). That was October, 2021. Applicant wrote a correction letter on 28/04/2022 asking for correction of errors, the question is where was he or what was he doing from October 2021 to April 2022 when he started to act. Applicant was silent in his affidavit and submission by his counsel in this court in favor of the application on what he was doing on each day of Page 7 of 8 the delay in the indicated months from October 2021 after he was discharged and after medical report from Bugando Medical Center to April 2022 when he started the move to correct errors. This displays apathy and negligence on part of the applicant and is discouraged by the Court in the precedent of Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania (supra), which had resolved that: applicants for enlargement of time must show diligence and not apathy or negligence or sloppiness in prosecuting their actions that they intend to take. Having said so, I hold that the applicant has failed to persuade this court to decide in his favor for lack of necessary materials to establish why he lately apply for correction of errors in the judgment (October 2021 to April 2022) which made him to apply for time to file an appeal. In the result, the application is dismissed. No order as to costs. DATED at MUSOMA this 24th day of January, 2024. NT M. L. KOMBA Judge Page 8 of 8

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