

TANZANIA / JUDGMENT

## NASHON

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14 September 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB  
REGISTRY AT DAR ES SALAAM MISC. CIVIL APPLICATION NO. 22955 OF 2024 (Originating from  
PC Civil Appeal No 60 of 2023 in the District Court of Ilala at Ilala) NASHONS RESEARCHER  
COMPANY LIMITED..... APPLICANT VERSUS MICHAEL JOSEPH  
LUWELA.....RESPONDENT

## RULING

MKWIZU,J: This application is made by a chamber summons under Section 25(1)(b) of the  
Magistrates' Court Act [Cap 11 R.E. 2019] supported by an affidavit from Catherine A. Lyasenga.  
The applicant seeks the following orders from the Court:

1. An extension of time to file an appeal against the judgment and decree in PC Civil Case No. 60 of 2023, issued by the District Court of Ilala before Hon. Burhan RM on August 31, 2024.
2. An order for costs.
3. Any other order that this honorable Tribunal may deem 1 appropriate. The hearing was ordered to proceed through written submissions. Ms. Catherine A. Lyasenga represented the applicant, while Mr. Onesmo Kinawari represented the respondent, both learned advocates. Ms. Lyasenga began by adopting the affidavit and supporting documents into her submissions. She reaffirmed that extending time is at the court's discretion, exercised judiciously based on reason and justice, not arbitrary judgment. She cited cases including *Lyamuya Construction v. Young Women Christians Association*, Civil Application No. 2 of 2010; *Tanga Cement Co. v. Jumanne D. Masangwa and Amos Mwalwanda*, Civil Application No. 6 of 2001; and *Hadija Mrisho Nzw'ala v. Jumanne Gauge*, Misc. Civil Application No. 01/2022 (unreported). Ms. Lyasenga noted that the application was filed on 14 September 2024, after the applicant received the decree on 5 September 2024, in accordance with the Case Management System (CMS) instructions. In the respondent's absence, the District Court of Ilala issued its decision on 31 July 2024. Legally, the appeal was due by 31 August 2024. He stated that according to Rule 4(1) of the Civil Procedure (Appeals in Proceedings Originating in Primary Court) Rules, GN No. 312 of 1964, attaching copies of the judgment and decree in the intended appeal was not mandatory. 2 Therefore, after receiving the judgment on 6 August 2024, the advocate did not pursue the decree and filed the appeal

without it. He submitted his appeal within the time limit on 28 August 2024 via Jot-CMS. However, CMS rejected the appeal due to the missing decree. Despite these challenges, the advocate earnestly attempted to ensure the appeal was filed promptly. A copy of the decree was issued on 5 September 2024, as detailed in Annexure NS-5, leading to the preparation of this application for an extension of time, given that the deadline for filing the appeal had lapsed on 31 August 2024. The application was subsequently filed on 14 September 2024. Ms. Lyasenga stated that the delay was technical, not due to the applicant's negligence, and urged the court to allow the application. Opposing the application, Mr. Onesmo Kinawari, the learned counsel for the respondent, adopted the contents of the counter-affidavit sworn by the respondent as part of his reply submission. He submitted that for the court to grant an application for an extension of time, the applicant must demonstrate the reasons for it; account for each day of the delay, ensure the delay is not inordinate, show diligence rather than apathy, negligence, or sloppiness in the prosecution of their case; and finally, the court must feel that there are sufficient reasons. <sup>3</sup> He noted that the applicant failed to account for the 9-day gap between receiving the decree and filing her application. The delay was attributed to the applicant's negligence, as the decree was available on the judgment date and while the applicant requested the decree on 6 August 2024, she only collected it on 5 September 2024 without providing an explanation for the delay. He maintained that her inability to file on time was due to her inaction and emphasised that courts do not consider negligence by a legal advocate as valid grounds for extensions of time. He lastly requested for the dismissal of the application with costs. In rejoinder, the Appellant reiterated what she submitted in her submission to the Chief. They pray to this Honorable Court for an extended time so that this higher court can determine the crucial issue of the trial court's jurisdiction, which the first appellate court has raised. I have considered the party's submissions and cited provisions of the law; the main issue is whether the applicant established sufficient cause to warrant this application. It is a settled principle that granting or refusing to grant an extension of time is the court's discretion. Nevertheless, the same has to be judiciously exercised upon sufficient cause being shown. The same argument was stated in the case of Constantine Victor John vs Muhumbili National Hospital, Civil Application No214 of 2018 and 4 in the case of Benedict Mumelo vs Bank of Tanzania, Civil Application No 12 of 2012 when the Court of Appeal of Tanzania held that; - ".....it is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse extension of time may only be granted where it has sufficiently been with sufficient cause". This application was brought before this court under section 25(1)(b) of the Magistrate Courts Act(supra) which provides: "25(1) Save as hereinafter provided- (b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired. The records clearly indicate that the impugned decision was delivered on 31 July 2024. On 6 August 2024, the respondent's advocate proactively requested certified copies of both the judgment and the corresponding 5 decree, demonstrating diligence in pursuing the appeal.

Subsequently, on 28 August 2024, the advocate filed the intended appeal through the JoT-eCMS (Case Management System). Unfortunately, the petition was rejected due to the absence of a required copy of the decree, a fact corroborated by the information retrieved from the judiciary system and included in the affidavit marked as NS-4. This rejection necessitated further action from the trial court, resulting in the counsel obtaining the decree on 5 September 2024. The application was then prepared and filed shortly thereafter, on 14 September 2024. The respondent's counsel argues that the applicant did not account for the nine days between receiving the decree and filing the application. However, this perspective fails to consider essential timeline factors. Notably, the applicant was effective "out of time" after August 31, 2024, when the rejected appeal was first filed. So generally, the delay in filing the current application stemmed not from negligence but from procedural issues tied to the initial dismissal. Given these circumstances, I find the 9-day delay between the receipt of the decree and the filing of this application justifiable. The applicant has shown diligence in pursuing her legal rights. Therefore, I hereby grant this application, permitting the applicant 14 days from the date of this 6 ruling to file the intended appeal. There is no order as to costs. It is so ordered. DATED at DAR ES SALAAM, this 14TH MARCH 2025 E.Y. MKWIZU JUDGE 7

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