

TANZANIA / JUDGMENT

SIKUJUA PASCHAL

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TANZLIIDECIDED
9 September 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SHINYANGA SUB REGISTRY AT SHINYANGA MISC. CIVIL APPLICATION NO. 202407221000017578 (Arising from Civil Appeal No.14 of 2023, the same arise from Civil Case 1 of 2022 Bubiki Primary Court) SIKUJUA PASCHALAPPLICANT VERSUS SUNGO GEORGERESPONDENT

RULING

4th & 9th September, 2024 F.H. MAHIMBALI, J The applicant unsuccessfully filed Civil Appeal No.14 of 2023 before the first appellate Court after being aggrieved by the decision of the trial Court in Civil Case No.1 of 2022 which ruled in her disfavor. Not amused with that decision, the applicant intended to appeal before this Court; thus, the basis of the current application for extension of time, to file her appeal out of time. During the hearing of the application both parties appeared in person while unrepresented. Amplifying for her application, the applicant prayed for her affidavit be adopted by this Court and form part of her submission. She also added that she was sick. That is the reason she failed to file her appeal within the time, even on the date of hearing, she alleged being not well as well. She finally prayed for the application be allowed. On the side of the respondent had nothing much to say, rather prayed for his counter affidavit be adopted and form part of his submission. He added that, he opposes the said application as it is unmerited. There has not been any tangible proof that the applicant was sick and how the said alleged sickness prevented her from appealing timely or filing this application earlier than done. He has been seeing the applicant at the village being fine and mobile all the time. He wonders as to when she fell sick to the extent of making her unable to appeal in time. Thus, he prayed for the application be dismissed for being devoid of any merit. The Applicant by way of rejoinder, stated that she was sick and thus kept on insistence of her application to be granted. Upon a thorough scanning of the applicant's application and the reasons contained into her affidavit, counter affidavit and submission of both parties, the issue for consideration is whether this application is merited. The applicant alleges that she was not satisfied with the decision of the first appellate court and when intended to appeal to this court she felt sick and she was admitted at Mwasingu dispensary in Bubiki ward for medication and thus she was unable to appeal within the prescribed time. She claims that, from 4/11/2023 when she was admitted at the dispensary, her condition was not stable, she continued attending medication at the dispensary on various dates up to July 2024 when she recovered well and decided to file the instant application. The

respondent has generally disputed the application of the applicant on the reason that it is baseless and that there has never been strict proof of the said sickness as alleged and how it prevented her from filing the intended appeal timely and or earlier than done in respect of the application. This being an application for extension of time, the law is settled that applicant has to show sufficient cause or good cause for delay as it was held in the case of Regional Manager, Tanroads Kagera vs. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007, CAT (unreported) and Benedict Mumello v. Bank of Tanzania

- [2006] E.A 227. I am aware that sickness has always been good reason for extension of time, but the same must be strictly proved. The law is well known that, sickness is a condition which is experienced by the person who is sick and that it is not a shared experience except for a sick person who is in a position to express his or her feelings (see John David Kashekya Vs the Attorney General, Civil Application No 1 of 2012 (unreported)). However, in order for the sickness to be a sufficient cause, the same must be sufficiently proved. This was also fittingly explained in the case of Emanuel R. Maira vs The District Executive Director of Bunda, Civil Application No. 66 of 2010 (unreported) that; "Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike." Again, in the case of Beatus Laurian Ndiaye versus Mariam Kitoela, Miscellaneous Civil Application No.6 of 2021, the court held that; " The applicant's only reason advanced is illness. I am well aware that as of late there are decisions which are to the effect that illness constitutes sufficient cause for extension of time. However, such illness must be sufficiently proved. Looking at the affidavit filed in support of the application, the applicant has attached to the affidavit a letter from the traditional healer indicating that he was admitted at his place where he was receiving treatment and was later discharged after he was well. That traditional healer further proved his professionalism by attaching a copy of his Certificate of incorporation No. A.91041 issued on 29/01/2019. The reason advanced by the applicant suffices to be sufficient cause upon which this court can exercise its discretion" All in all, I have given a due consideration of the applicant's submission. As a matter of principle, it is exclusively in the discretion of the court whether to grant or refuse an application (see also Christina Emmanuel Mandago vs. Emmanuel Shaban Makala, Misc. Civil application No.5 of 2023 H.C Shy (unreported)). Now, the impugned decision was delivered on 2/11/2023, the applicant was admitted at the hospital on 4/11/2023, the annexure is not clear as to whether was given bed admission or not but the applicant's affidavit provides that she was discharged and continued attending treatment up to July 2024. The applicant had filed the instant application on 22/7/2024. Mindful, the applicant has told this Court that she failed to file the appeal within the prescribed time due to sickness of which she recovered in July
2024. But this application was filed on 22nd July 2024 the time of which the applicant was sick or recovered. It is not known what is correct? If I opt to agree with her that after she had recovered from sickness, she filed this application, then why she could not file on earliest of July 2024 i.e 1st, or 2nd. Then if I opt to concede that the applicant was sick at all that time, then how did she manage to file this application while is sick and if not enough why

she could not do it earlier while is in the similar condition? Sincerely, I must associate myself with the argument by the respondent that, the applicant was not sick. The argument by the applicant does not suffice to hold reasonable grounds for the grant of the application. The time to appeal expired on 4/12/2023, the applicant had filed this application on 22 July 2024, more than eight months later. Indeed, the applicant has failed to account for all such period of delay. From that stance, I agree with the respondent that, the applicant has to account for each day of delay from delivery of the impugned decision to the date when she filed the present application. There is a litany of cases to that effect. In the case of Attorney General v. Mkongo Building and Civil Works and another, Civil application No, 266/16 of 2019, the Court of Appeal formulated guidelines that may be considered in application for extension of time like the one at my hand. Criteria to be considered in application for extension of time as formulated by the Court of Appeal in Mkongo Building case, *supra*, are that:-

- (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 that he intends to take; and
- (d) if the court feels that there are other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged.” (emphasis added). In the light of the above and in relation to the case at hand, it is clear that the applicant has failed to count for each day of delay for her to have established a sufficient cause. Accordingly, the application being devoid of any merit, is hereby dismissed. No orders as to costs. It is so ordered. DATED at SHINYANGA this 9th day of September, 2024. F.H. Mahimbali Judge.

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