

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
MISC. CIVIL APPLICATION NO. 06 OF 2020**

**1. ITILIMA DISTRICT COUNCIL
2. KAMATI YA UJENZI WA MAABARA
YA NDOLELEZI** } **APPLICANTS**

VERSUS

KILUMA BUILDERS (T) LTD.....RESPONDENT

(Arising from the Decision of Bariadi District Court)

(M. P. Mrio, SRM)

Dated 22nd day of November, 2017

in

Civil Appeal No.70 of 2017

RULING

17th November 2020 & 22nd January 2021

MDEMU, J.:

This is an application for extension of time whereby the Applicants, moved this Court under the provisions of sections 14 (1) of the Law of Limitation Act, Cap. 89 praying for the following orders;

- 1. That, the Honourable Court be pleased to issue an order for extend time to allow the Applicants to file an appeal out of time against the decision of Bariadi District Court in Civil Appeal No.70 of 2017.*
- 2. Any further reliefs that this Honourable Court may deem fit to grant.*

The application is supported by an affidavit sworn by Elizabeth.M.Gumbo Principal Officer of the 1stApplicant on 23rd March, 2020. On 17th of November,2020, this application was heard. The Applicant prayed to proceed exparte after the Respondent defaulted appearance without any notification.

Mr. Shayo, Learned Solicitor, who represented the Applicants submitted that, he delayed to appeal within time because he was not aware when the decision of the District Court of Bariadi got rendered and also parties were not served with that decision. He cited the case of **Yusufu Same and Another V.Hadija Yusufu, Civil Application No.1 of 2002**(unreported) to support his point that, being unaware of the decision is a sufficient ground for extension of time.

He further cited the case of **Felix Tumbo Kisina v.TTCL Ltd and Another, Civil Application No.1 of 1997**(unreported);**Michael Lesani v John Aliafye(1997) TLR 152**,to cement his point .For that reason, he prayed this application for extension of time be allowed.

Having carefully gone through submissions of the Learned Solicitor and affidavit as well, the issue to determine here is whether the Applicants have shown good and sufficient cause for the delay to allow this court to extend time to appeal. The provisions of **Section 14(1) of the Law of Limitation Act, Cap. 89** encompasses this legal requirement in the following terms;

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be either before or after the expire of the period of limitation prescribed for such appeal or application.

With this legal position, extension of time can be granted only if good and sufficient cause has been indicated by the Applicant. This legal requirement has been re stated in a number of court decisions. See the case of **Salum Nhumbili V. Republic, Criminal Application No. 8 of 2014, William Ndingu @ Ngoso V. Republic, Criminal Appeal No. 3 of 2014,** and **Dismas S/O Bunyerere V The Republic, Criminal Application No. 42/2017** (all unreported) where it was held that, for the court to exercise its discretion to extend time to appeal, the Applicant must satisfy that there are sufficient and good cause for the delay.

In the instant application, the Applicant's affidavit in paragraph 3 and 4 stated the following regarding delaying in processing his appeal;

- 3. That, on the 22nd day of November,2017, the first Appellate Court dismissed the Appeal for being incompetent filed before the court on account of procedural irregularities.*
- 4. That, owing to the absence of the Council's Solicitor and later the Legal service Unit of the Council becoming vacant for a considerable period the Applicants herein were unaware of the outcome of civil*

Appeal No.70/2017 hence all endeavors to obtain copies of the ruling had been stalled.

5. That, by the time the Applicants were made aware of the ruling of the first appellate court by receiving a copy thereof from the Respondent the time limit prescribed for filling an appeal against the said decision had already expired.

According to the grounds as quoted above for delay, I think in my view, there is no sufficient cause shown for this court to extend time. The records of the District Court of Bariadi in Civil Appeal No.70 of 2017 shows that, the appeal was dismissed by M.Mrio-SRM on 22nd of November, 2017 and got certified on 08th of February, 2018. In terms of the provisions of section 25(b) of the Magistrate's Court Act, Cap.11, time to appeal to this court is prescribed to be 30 days. The instant appeal ought to have been lodged latest by 07th March, 2018 so as to meet the prescribed period of thirty days.

I have also noted that, the Applicant is not consistent both in his affidavit and submissions at the bar regarding the component of sufficient cause. I am saying so because in the Applicant's affidavit, it is stated that, he was not aware of the decision of the first Appellate Court and also there

was vacant of the Council's Solicitor and Legal Service Unit. Much as there is no hard and fast rules as to what constitutes good and sufficient cause as was stated in the case of **Philemon Mang'ehe t/a Bukine Traders v. Gesso Hebron Bjuta, Civil Application No.8 of 2016; Henry Leonard Maeda and Another v. Ms. John Anael Mongi, Civil Application No. 31 of 2013**(both unreported); what is important is factors to be taken into account.

In the instant application, as said, the decision intended to be appealed against was delivered on 22nd of November 2017 and was certified on 8th of February, 2018. The Applicants filed an appeal on 23rd March, 2020 which was almost two years out of time. Mr. Shayo submitted that, he was not aware of the decision of the first appellate Court. However, the records of the District Court, at page 5 clearly shows that, there was a representative of the Applicant when the ruling got pronounced. The records read as follows: -

22/11/2017

CORAM:M.P.MRIO-SRM

C/C S.MPENDA

Having that demonstration, the Applicants has not shown sufficient cause for this court to allow him to appeal out of time. In the premises, I find no merits in this application and is accordingly dismissed. As the application was heard ex parte, an order as to costs is not prescribed.

Order accordingly.


Gerson J.Mdemu
JUDGE
22/01/2021

DATED at **SHINYANGA** this 22nd day of January, 2021




Gerson J.Mdemu
JUDGE
22/01/2021