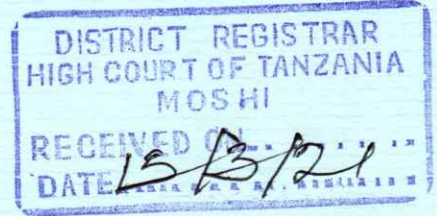


IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY)

AT MOSHI



MISC. CIVIL APPLICATION NO. 25 OF 2020

(originating from Civil Case No 17 of 2016)

BETWEEN

UAP INSURANCE TANZANIA LTD..... APPLICANT

VERSUS

ZAKARIA INNOCENT LYIMO1ST RESPONDENT

EMMANUEL A. MKATA.....2ND RESPONDENT

GOODLUCK JOSEPH MBOYA.....3RD RESPONDENT

PANONE & COMPANY LIMITED.....4TH RESPONDENT

1ST AND 2ND RESPONDENTS WRITTEN SUBMISSION IN OPPOSITION OF THE

APPLICATION FOR EXTENSION OF TIME TO FILE APPEAL.

(Pursuant to Order of this Honorable Court's Order, Hon MUTUNGI J, dated 15th February 2021)

MAY IT PLEASE YOUR HONORABLE JUDGE

MADAM JUDGE, the 1st and 2nd Respondents herein wish to submit as hereunder:

MADAM JUDGE, the Respondents would like to note paragraph 1 of the applicants written submission.

MADAM JUDGE, by replying to paragraph 2 of the applicants written submission, the law is

very clear that inter alia *"..... the High Court for good cause, may extend time for filing an appeal either before or after the expiration of such period of Forty-five days"* that is to say if there is no good cause the court may not extend the time.

MADAM JUDGE, on addressing paragraph 2 of the applicant written submission, the applicant has failed to show reasonable or sufficient cause as to why he delayed to file his appeal within the prescribed time limit.

MADAM JUDGE, in addressing paragraph 3 of the applicant written submission, the law is very clear that when it comes for application for extension of time to lodge applications or appeals the applicant has a burden to account for every day lost/ delayed. In the present case the applicant did not account for every day lost/ delayed and he is just pleading for mercy of this Honorable Court.

The respondents would like to draw the attention of this Honorable Court to the case of **Godwin Ndemesi and Karol Ishengoma vs. Tanzania Audit Corporation (1995) TLR 2001**. Where the court held as I hereunder quote: *".... if the appellant has good case on merits but is out of time and has not valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy and the appeal should be dismissed as time barred, even at the risk of injustice to the appellant."*

MADAM JUDGE, referring to paragraph 4 of the 1st and 2nd respondents written submission which dispute paragraph 3 of the applicant written submission where the applicant is put into strictly proof of the same.

It is far known as a practice that no application can be filed electronically out of time. So, the

of the defunct **Court of Appeal of Eastern Africa in Mbogo Vs. Shah (1968) EA** where it was held that *"all relevant factors must be taken into account in deciding how to exercise discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is arguable case on the appeal and degree of prejudice."*

In the light of the above decision, the applicant has failed to show good cause, and he doesn't maintain an arguable case in the appeal if he is granted extension. It will be a wastage of the precious Court time and the abuse of the right for extension of time as provided under the laws.

MADAM JUDGE, In the case of **Mohamed Hassan Hole Vs. Keya Jumanne Ramadhan (CAT. Dodoma. Civil Appeal No. 19/1992) (Un reported)** the Court held that limitation of time as a merciless monster that entertain no speak of sympathy whatsoever the court might be sympathetic to the applicant. The Court of Appeal of the United Republic of Tanzania articulated as I quote:

"it is trite law that when it comes to limitation of time the court cannot extend even a grain however it may be to the applicant/litigant. Limitation of time is a merciless monster that entertain no speak of sympathy whatsoever unless the leeway is provided by the law".

MADAM JUDGE, it is in the totality of the respondent's submission, that the applicants reasons/excuse for delay are not maintainable in the eyes of law as they are not proved by evidence from the applicant and that the noble Court as this cannot grant leave on mere words of mouth without due cause, showing diligence in accounting the reasons to appeal out of time.

The applicant has show apathy negligence and sloppiness in accounting his delay and has failed to show good cause since the delay is inordinate and also, he has failed show the account for all

applicants act trying to file the requisite documents of appeal while he knew the system will reject the same, it is apathy negligence and sloppiness in the prosecution principles.

The respondents will draw attention of this Honorable Court that the cases so cited by the applicant which are **Tropical Air (TZ) Limited Vs. Godson Eliona Moshi (Unreported) Civil Application no 9 of 2017** as well as **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, (Unreported)** are distinguishable to the present case before your honor, as in the cited case the applicant was not even aware of the date on which the judgment was delivered but he (applicant in the supra case) managed to show diligence and the account for all the period of delay whilst the same has not been shown in the present case.

MADAM JUDGE, it is clear that the decision of the trial Court was not tainted with illegalities. Due to unprecedented absence of the applicant during hearing which caused delay of the case. It was of important to fix three consecutive days for hearing so as to cover the speed truck of the case which were 1st, 2nd, 3rd days of April 2019 in whose the applicant deed not appear on the first day where the court decided to proceed ex-parte which is part and parcel of the court procedures.

We think the applicant can lodge this application to pray to be granted with extension of time to file revision and not appeal if he wants to challenge the legality of the judgment and decree from **Civil case no 17 of 2016 as per section 79 1 (c) of the civil procedure code, Cap 33 R: E 2019.**

MADAM JUDGE, the applicant's application is unfounded and misleading especially in the issue of illegality, a number of factors beyond illegality must be shown when praying for extension of time to appeal out of time. In **Ngao Godwin Losero Vs. Julius Mwarabu, Civil Application No. 10 of 2015 (Unreported)** in which the Court quoted with approval the decision

the period of delay. The application is intended just for the sake of causing inconveniences to the respondents.

THEREFORE, the 1st and 2nd respondents humbly pray and begs before this honorable Court to dismiss the present application with costs.

We humbly submit

Dated at Moshi this 14th Day of March 2021

Z. I. Lyimo

1ST RESPONDENT

[Signature]

2ND RESPONDENT

Presented for filing this 15th Day of March 2021

[Signature]

REGISTRY OFFICER

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