

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO.1 OF 2006**

**DIRECTOR RUHONGE**

**ENTERPRISES.....APPLICANT**

**VERSUS**

**JANUARY**

**LICHINGA.....RESPONDENT**

**(Application for extension of time from  
the decision of the High Court of Tanzania  
at Mtwara)**

**( LUKELELWA, J.)**

**Dated the 5<sup>th</sup> April, 2005**

**In**

**MISC. Civil Appeal No. 6 of 2004**

.....

**RULING**

**23<sup>rd</sup> February & 23<sup>rd</sup> March, 2007**

**KIMARO, J.A**

This is an application for extension of time to file an appeal against the decision of the High Court in Misc. Civil Application No. 6

of 2004. The application which is made under Rule 8 of the Court of Appeal Rules, 1979 is supported by the affidavit of John Milanzi.

The background information to the application is that the applicant was aggrieved by the decision of the High Court delivered on 5<sup>th</sup> April 2005. An application seeking for leave to appeal to the Court of Appeal was applied for, and granted on 4<sup>th</sup> July 2005. A certificate of delay under Rule 83(1) of the Court Rules was also granted. It shows that the time for filing the appeal started to run from 23<sup>rd</sup> April, 2005. The applicant was not able to file the appeal within the sixty days provided for under Rule 83(1) of the Court Rules. He is now before the Court seeking for extension of time to file the appeal.

When the application was called on for the hearing, the applicant who appeared in person opted to adopt his affidavit without making additional submissions.

He has deposed at paragraphs 5, 6 and 7 of his affidavit that from 18<sup>th</sup> August to 28<sup>th</sup> August, 2005 he was admitted at Ligula Government Hospital for severe malaria attack. After discharge, it took him long to recover. He continued treatment as an out patient until 27<sup>th</sup> January 2006.

From what is deposed in the affidavit of the applicant, it is obvious that sickness is the reason relied upon by the applicant to seek extension of time. The respondent who also appeared in person objected to the application, stating that the applicant was not sick. However, there was no counter affidavit filed by him.

The relevant factor for consideration in an application for extension of time under Rule 8 of the Court Rules is sufficient cause for the delay. In the case of **Tanga Cement Company Ltd Versus Jumanne D. Masangwa and Amos A. Mwalwanda** CAT Civil Application No. 6 of 2001 (unreported), a Single Judge of the Court (Nsekela, J.A.) while dealing with an application for extension of time under Rule 8 of the Court Rules said:

It is trite law that in terms of rule 8 of the Court Rules, an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion however has to be exercised judicially, and the overriding consideration is that there must be "sufficient cause" for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any

valid explanation for the delay; lack of diligence on the part of the applicant.

See also the cases of **Chawe Transport Import & Export Co. Ltd.versus Pan Construction Co. Ltd and Three Others** Civil Application No.146 of 2005 (unreported) and **Standard Chartered Bank(Tanzania ) Ltd Versus Bata Shoe Company (T) Limited** Civil Application No. 101 of 2006.

The applicant was required to file the appeal within sixty days from 23<sup>rd</sup> August, 2005 when the judgment, proceedings and decree in Miscellaneous Civil Appeal No. 6 of 2004 were collected. The appeal has not been filed. In accounting for the delay in filing the appeal, the applicant deposed in his affidavit that sickness prevented him from filing the same in time. Attached to the affidavit are documents showing that he was admitted at Ligula Government Hospital on 18/08/2005 and discharged on 26/08/2005. He continued to be treated in the same hospital as an out patient from 10/10/2005 until 27/01/ 2006. Although the respondent contended that the applicant was not sick, he did not file any counter affidavit. There is therefore, no evidence to counter the evidence of the applicant. Under the circumstances, there is no reason for the Court to doubt the evidence of the applicant.

The question is whether there is sufficient evidence to explain the delay. In my considered view, the evidence brought by the applicant to account for the delay is sufficient. The last time the applicant was in hospital for a check up of his health was on 27/01/2006, according to his affidavit. This was the date when the doctor assessed his health and was satisfied that the applicant had fully recovered. Three weeks later, on 22<sup>nd</sup> February 2006, this application was filed.

Under normal circumstances, for a person who had health problems for six months, taking three weeks after recovery, to file this application, can not be said to have delayed in filing the application. In my considered opinion he acted promptly. I accordingly grant the application with no order as to costs. The appeal should be filed within a period of thirty days from the delivery of this ruling.

DATED at DAR ES SALAAM this 23<sup>rd</sup> day of March, 2007

N.P.KIMARO

**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

**S. M. RUMANYIKA**  
**DEPUTY REGISTRAR**