THE REPUBLIC OF UGANDA

IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA

MISCELLANEOUS APPLICATION No. 1 OF 2023

(Arising out of complaint No. IRAB/COMP.95/05/22)

ZIMU CONSTRUCTION COMPANY LIMITED:::::::::::::::::::::::::::::::: APPLICANT

VERSUS

EXCEL INSURANCE COMPANY LIMITED :::::::::::::::::::::::::::::::: RESPONDENT

CORAM: RITA NAMAKIIKA NANGONO - CHAIRPERSON; JOHN BBALE MAYANJA, GEORGE STEVEN OKOTHA, SOLOME MAYINJA LUWAGA - MEMBERS.

RULING

This ruling arises from an application filed on 19th May 2023 seeking leave to appeal out of time against the decision of the Insurance Regulatory Authority (IRA) made against the applicant in Complaint No. IRAB/Comp.95/05/22.

The appeal was premised on three grounds and supported by an affidavit of Mr. Richard Muhangi, the Director of the applicant. The grounds, in summary, are that;

a) The applicant was prevented by sufficient cause from filing the appeal within the time prescribed by law.
b) The appeal raises good and plausible grounds with high chances of success.
c) It is in the interest of justice that the orders sought are granted.

The evidence presented before the Tribunal is contained in the affidavit of Mr. Muhangi and it is to the effect that on 26th May 2022, the Applicant filed a complaint before the Complaints Bureau of the Insurance Regulatory Authority. On 6th January 2023, IRA rendered its decision. Whereas the applicant was dissatisfied with the said decision, it was prevented from instructing an advocate to advise its directors on the next steps specifically the timelines within which to appeal, since one of the co-directors had earlier passed on and the deponent who was the other surviving director and husband to the deceased director, was undergoing extreme mental and psychological trauma and unable to attend to the business of the company.

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The deponent averred that having later instructed the lawyers of M/s Tusasirwe & Co. Advocates to represent the applicant, he was advised of the timelines in which to appeal hence this application.

The deponent believes that the appeal has merit and is likely to succeed given the fact that the Authority based its decision on irrelevant considerations, the assessor's report which formed the basis of the decision was not availed, and the Authority misinterpreted some of the terms of the policy.

At the hearing of the application, the Applicant was represented by Mr. Saad Sengendo together with Mr Ouma Fred from M/s Tusasurwe & Co. Advocates, and in attendance was the Applicant's Director Mr. Richard Muhangi.

The respondent never filed any affidavit in reply to the application and neither was it represented at the hearing, despite an affidavit of service on record.

Respondent's Submission

Counsel made both oral and written submissions. Counsel noted that whereas the Insurance Act and the Insurance Appeals Regulations specify the time within which to appeal, they make no provision as to the procedure where a party is unable to file an appeal before the Tribunal within 30 days from the date of the decision by IRA.

Counsel relied on Regulation 29 of the Insurance Appeals Tribunal Regulations to borrow from the rules of procedure of the High Court which provide for enlargement of time within which an appeal can be lodged.

Specifically, Counsel relied on Order 51 Rule 6 of the Civil Procedure Rules SI 70-1 which provides for the power to enlarge the time set in the law for a particular activity provided that the application shows just cause.

Counsel also relied on S. 98 which provides for the inherent power of the Court to make such orders necessary for the administration of justice. He contended that under Regulation 9 of the Insurance Appeals Tribunal Regulations, this power extends to the Tribunal.

Counsel submitted that the appeal has good and plausible grounds with a high chance of success. These grounds are contained in annexure "D" to the affidavit in support.

He contended that it was in the interest of justice that the orders sought are granted to the applicant. He relied on the provisions of Article 129 (2) (e) of the

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constitution which enjoins the Tribunal to do substantive justice without undue regard to technicalities.

At the hearing, the Tribunal sought clarification as to when the death of the co-director/spouse happened and whether a copy of the death certificate could be availed to corroborate the evidence contained in the affidavit of Mr. Muhangi. The director of the applicant died in March 2020. Asked to explain how that prevented him from filing the appeal within the time stipulated in the law, the deponent explained that during the time he was to file an appeal, he was organising a memorial service for the deceased co-director who was also his spouse.

Ruling

It is trite law that for an application for enlargement of time within which to file an appeal, the applicant must prove two key grounds;

a. That the applicant was prevented by sufficient cause to file the appeal within the prescribed time.
b. The appeal has good and plausible grounds with a high chance of success.

Enlargement of time within which to appeal is discretional and for one to invoke such discretion one must demonstrate to the Tribunal that they were prevented by just cause. While dealing with the question of enlargement of time within which to appeal, Mubiru J in **HMA 24 of 2013 Muzamiru V Tarapke and 6 others** held that;

Enlargement of time is a discretion that must be exercised judicially on proper analysis of the facts and application of the law to the facts. The power to grant leave to file an appeal out of time is a discretionary one and the party seeking such discretionary orders which are only given on a case-to-case basis, not as a matter of right, must satisfy the court by placing some material before the court upon which such discretion may be exercised. Applications for enlargement of time within which to appeal will not be granted if the delay is inexcusably long, where injustice will be caused to the other party, or where there is no reasonable justification.

We have carefully studied the application and the affidavit in support and also listened to the oral submissions of counsel and the deponent who is also a director of the Applicant. On careful study of the application and by the admission of the deponent of the affidavit in support, the reason given for the delay was the death of the co-director and wife of the surviving director. It was the testimony of Mr. Muhangi that his wife passed away in March 2020. By this time the complaint to

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IRA had not been lodged. Annexure "A" to the affidavit in support shows that the complaint was filed on 26th May 2022. This was more than a year after the death of the co-director.

IRA heard the complaint and gave its decision on 5th January 2023, more than 3 years after the death of the co-director. The application for leave to appeal was then brought almost five months after the decision of the IRA.

For counsel, we find the reason given for the delay unjustifiable given that the co-director and spouse died long before the complaint was lodged and that any rites performed when the appeal was meant to be lodged are not a sufficient reason to justify the delay in filing. We also find that the delay was inordinate to warrant invoking the discretion of this Tribunal.

Counsel contended that it is just and equitable that leave is granted and referred the Tribunal to Article 126 (2) (e) of the Constitution. In HMA 9 of 2017 Rashida Abdul Karim Hanari & another V Suleiman Adris the Court held that;

Article 126 (2) (e) of *The Constitution of the Republic of Uganda, 1995,* is not a panacea for all ills and in appropriate cases, the court will still strike out pleadings such as this considering that one of the aims and overriding objective of the amendment of Order 5 of *The Civil Procedure R*ules was to enhance expeditious disposal of suits and curtail the abuse of court process for ulterior motives. If this proposition is correct, as I think it is, it would follow that a suit would be liable for striking out at any stage upon expiry of the stipulated periods before the summons duly issued is served. The timelines in the rules are intended to make the process of judicial adjudication and determination swift, fair, just, certain, and even-handed. Indeed, public policy demands that cases be heard and determined expeditiously since delay defeats equity, and denies the parties legitimate expectations (see *Fitzpatrick v. Batger & Co. Ltd [1967] 2 All ER 657*).

Similarly, the purpose of the timelines given in S. 137 of the Insurance Act 2017 were intended to provide for speedy trial and disposal of insurance disputes and the Tribunal would not be justified to take refuge under article 126 (2) (e) of the constitution to allow applications that do not disclose sufficient cause for the delay.

What constitutes "sufficient reason" will naturally depend on the circumstances of each case. It was held in ***Shanti v. Hindocha and others [1973] EA 207***, that;

> The position of an applicant for an extension of time is entirely different from that of an applicant for leave to appeal. He is concerned with showing sufficient reason (read special circumstances) why he should be given more time and the most persuasive reason that he can show is that the delay has not been caused or contributed to by dilatory conduct on his part. But there are other reasons and these are all matters of degree. (Emphasis added).

Although such circumstances ordinarily relate to the inability or failure to take a particular step within the prescribed time which is considered to be the most persuasive reason, it is not the only acceptable reason. The reasons may not necessarily be restricted to explaining the delay. An applicant who has been indolent, has not furnished grounds to show that the intended appeal is meritous may in a particular case yet succeed because of the nature of the subject matter of the dispute, absence of any significant prejudice likely to be caused to the respondent and the Court's constitutional obligation to administer substantive justice without undue regard to technicalities. I am persuaded in this point of view by the principle in ***National Enterprises Corporation v. Mukisa Foods, C.A. Civil Appeal No. 42 of 1997*** where the Court of Appeal held that denying a subject a hearing should be the last resort of court.

The considerations which guide courts in arriving at the appropriate decision were outlined in the case of ***Tiberio Okeny and another v. The Attorney General and two others C. A. Civil Appeal No. 51 of 2001***, where it was held that;

(a) First and foremost, the application must show sufficient reason related to the liability or failure to take some particular step within the prescribed time. The general requirement notwithstanding each case must be decided on facts.

(b) The administration of justice normally requires that the substance of all disputes should be investigated and decided on the merits and that error and lapses should not necessarily debar a litigant from the pursuit of his rights.

(c) Whilst mistakes of counsel sometimes may amount to sufficient reason this is only if they amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.

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(d) Unless the Appellant was guilty of dilatory conduct in the instructions of his lawyer, errors or omission on the part of counsel should not be visited on the litigant.

(e) Where an Applicant instructed a lawyer in time, his rights should not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirements of the law.....it is only after "sufficient reason" has been advanced that a court considers, before exercising its discretion whether or not to grant the extension, the question of prejudice, or the possibility of success and such other factors ...".

In the instant case, the reason given by the applicant is too remote having happened long before the complaint was instituted and the Tribunal cannot rely on it as sufficient cause to warrant granting leave to file the appeal out of the prescribed time.

Lastly, the applicant argues that the appeal has a high chance of success. Whereas on perusal of annexure D, there are grounds of appeal which may raise triable issues, the same have been fettered by the dilatory conduct of the applicant that is without just cause.

In **Mulindwa V Kisubika, SCCA No. 12 of 2014**, the Supreme Court held that the applicant seeking for extension of time has the burden of proving to the Court's satisfaction that for sufficient reasons it was not possible to appeal in the prescribed time. Sufficient reason must relate to the inability or failure to take a particular step in the proceedings.

Each application must be viewed by reference to the criterion of justice and it is important to bear in mind that time limits are there to be observed, and justice may be defeated if there is laxity. Factors to be considered in an application for an extension of time are:

i. The length of the delay;
ii. The reason for the delay;
iii. The possibility or chances of success;
iv. The degree of prejudice to the other party.

Once a delay is not accounted for, it does not matter the length of the delay. There must always be an explanation for the period of delay.

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Since, as we have held, that delay in bringing this appeal has not been satisfactorily accounted for, the possibility or chances of success of this appeal succeeding must be answered in the negative.

In the circumstances, this application is dismissed.

There is no order made as to costs made.

DATED and **DELIVERED** at **KAMPALA** on the 23rd day of **JUNE**_____ **2023.**

SOLOME MAYINJA LUWAGA

Ag. CHAIRPERSON

GEORGE STEVEN OKOTHA

MEMBER

JOHN BBALE MAYANJA (PhD)

MEMBER