

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 182 OF 2017

(Arising from the decision of Kinondoni District Court in Civil Appeal No. 14 of 2016, Originating from the decision of the Kinondoni Primary Court in Civil Case No. 70 of 2013)

DURRA ABEID.....APPLICANT

Versus

HONEST SWAI.....RESPONDENT

RULING

B.R. MUTUNGI, J:

DURRA ABEID (herein is referred as the applicant) is seeking for an extension of time to file his intended appeal out of time against the decision of Kinondoni District Court in Civil Appeal No. 14 of 2016 (the first appellate court). The instant application has been brought by way of a chamber summons made under section 14 (1) of the Law of Limitation

Act [Cap. 89 R.E 2002], supported by an affidavit sworn and affirmed by the applicant.

The applicant in his affidavit deponed he was aggrieved by the decision of the first appellate court which was delivered on 18/10/2016. He subsequently made several follow ups to be supplied with copies of judgment. He further stated he had to seek for legal assistance on the way to challenge the decision of the first appellate court. Thus, after consulting the lawyers for legal aid, he was informed that the time frame within which to appeal had long expired.

The respondent in his counter affidavit opposed the application on the ground that, the applicant has failed to advance sufficient reasons for the delay. The respondent further stated the applicant has taken eleven months after the disputed decision to file this application. It is thus obvious

that the delay was occasioned by the applicant's negligence.

When this matter was called for hearing, the scheduling order was set so that the parties herein could file their respective written submissions for or against the application.

The applicant in his written submission argued there was no negligence demonstrated in pursuing his right of appeal. He insisted the delay was caused by the first appellate court's delay in supplying him with copies of appeal documents. More so, he spent more time in doing a research at the Legal and Human Rights Centre. He was of the view the time from when he applied for the copies to when he was supplied be excluded as per section 19 (2) of the Law of Limitation Act (supra). In view of the foregoing the applicant concluded the delay was beyond his control.

In support of his submission the applicant referred the court to the cases of **Mobram Gold Corporation Ltd Versus EA Goldmines Ltd [1998] TLR 425; Mawji Versus Amola General Stores [1970] EA 137; Benedict Mumello Versus Bank of Tanzania, Civil Appeal No. 12 of 2002; Tanga Cement Company Ltd Versus Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001 and General Marketing Co. Ltd Versus A.A. Sharrif [1980] TLR 6.**

The applicant further suggested technicalities are not there to defeat substantive justice and cited Article 107A of the Constitution of the United Republic of Tanzania of 1977 (as amended from time to time) to bring home his point. He also referred this court to the case of **Julius Ishengoma Francis Ndyanabo Versus AG [2001] 2 EA 285.**

The respondent on the other hand was of the view that, the applicant was negligent in handling the matter. The period of delay is inordinate in a way that she is to be blamed.

The issue to be deliberated upon is whether the applicant has advanced sufficient reasons to move the court to grant the sought extension. It is trite law that, an application for extension of time can be granted where sufficient reasons have been advanced by the applicant. As to what amounts to sufficient reasons has been well elaborated in the case of **TANESCO VERSUS MUFUNGO LEONARD MAJURA AND 15 OTHERS, CIVIL APPLICATION NO. 94 OF 2016 (CAT-DSM) (UNREPORTED)** at page 10 where the court of Appeal of Tanzania cited with approval the case of **Lyamuya Construction Company Ltd Versus Board of Trustees of Young Women's Christians Association of Tanzania, Civil Application No. 2 of 2010** where it was stated;

a) The applicant must account for the delay for the period of the 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.*

d) *If the court feels that, there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

First and foremost, it has been observed by this court that the matter at hand has its genesis in the primary court hence the Law of Limitation Act (supra) does not apply herein. **Section 25 (1) (b) of the Magistrates' Courts Act [Cap. 11 R.E 2002]** clearly stipulates that an aggrieved party against the decision of the District Court sitting in its appellate jurisdiction is to file his appeal herein within thirty (30) days from the date of the decision, be it whether the copy of the disputed judgment was ready for collection or otherwise.

In the matter at hand, the decision of the first appellate court was delivered on 28/10/2016 hence the applicant was supposed to file his appeal on or before 28/11/2016. The instant application was filed herein on 5/4/2017 which is after a lapse of five (5) months. In totality the applicant's move herein indicates sloppiness as well as negligence on her part in prosecuting the matter. She admits she was issued with a copy of judgment on 21/12/2016 but still sat on her rights up to 5/4/2017.

However, even though the applicant in the written submission suggested that, she is a lay person and should benefit from the shield anchored in Article 107A of the Constitution of the United Republic of Tanzania (supra),. With due to respect I disagree with her and my reasons are to be found in the case of **THOMAS DAVID KIRUMBUYO AND ANOTHER VERSUS TANZANIA TELECOMMUNICATION CO. LTD,**

CIVIL APPLICATION NO. 1 OF 2005 (CAT-DSM) (UNREPORTED)

at page 6 the Court of Appeal held;

'...In order to ensure that the machinery of administering justice is not hampered, the court is bound stringently. There is no exception provided under the rules for a relaxed application when laymen are involved as is the case here. All the more so, when it involves noncompliance with the rules on aspect which go to the root, the consequences are fatal. ...I cannot therefore entertain the applicant's lenience in applying the rules upon the fact they are laymen.'

Further, as to the applicability of Article 107A (2) (e) of our Constitution (supra), in the case of **ABUBAKAR ALI HIMID VERSUS EDWARD NYELUSYE, CIVIL APPEAL NO. 70 OF 2010 (CAT-DSM) (UNREPORTED)** at page 10 the Court cited with approval the case of **Zuberi Musa Versus Shinyanga Town Council, Civil Application No. 100 of 2004 (Unreported)** where it was stated;

'...Article 107A (2) (e) is so couched that in itself it is both conclusive and exclusive of any opposite interpretation. A purposive interpretation makes it plain that it should be taken as a guideline for court action and not as an iron clad rule which bars the courts from taking cognizance of salutary rules of procedure which when properly employed held to enhance the quality of justice. It recognizes the importance of such rules in the orderly and predictable administration of justice....'

In the event, I subscribe to the above two legal positions and proceed to knock out the applicant's explanations pegged under the umbrella of the noble Constitution. Be as it may be, as pointed out earlier in the ruling the cited enabling provision does not give room to the court to do what it is asked to do. In view thereof, the application is incompetent before the court hence should be sanctioned to a striking out. Most importantly as already

elaborated the applicant has failed to advance sufficient reasons to impress the court on the merits of the application.

From the above stated reasons, I find the applicant has failed to advance sufficient reasons to be granted extension of time to appeal against the decision of the first appellate court.

In the event, I accordingly dismiss the application with no costs.

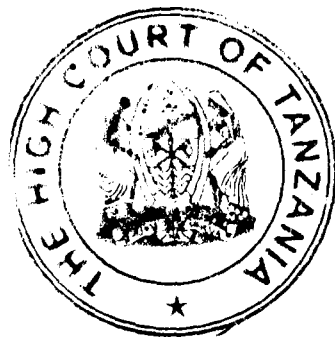
It is so ordered.


B.R. MUTUNGI

JUDGE

16/3/2018

Read this day of 16/3/2018 in the presence of the applicant and the respondent.

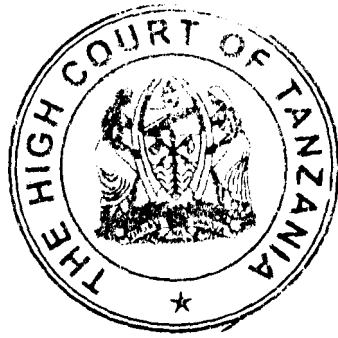



B.R. MUTUNGI

JUDGE

16/3/2018

Right of Appeal Explained.




B.R. MUTUNGI

JUDGE

16/3/2018