

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

**MISCELLANEOUS CIVIL APPLICATION NO. 473 OF 2016
(Originating from the decision of the Resident MAGISTRATE
Court of Dar es Salaam at Kisutu in RM Civil Case No. 39 of
2012)**

ACCESS BANK TANZANIA LTD.....APPLICANT

Versus

SHANILA MWENDA RAMADHANI.....RESPONDENT

RULING

B.R. MUTUNGI, J:

The applicant herein is seeking for an extension of time to file an appeal out of time against the decision of the Resident Magistrate Court of Dar es Salaam in RM Civil Case No. 39 of 2012 delivered on 25/8/2015. The instant application has been brought by a chamber summons under section 14 (1) and (2) of the Law of Limitation Act [Cap. 89 R.E 2002] supported by an affidavit sworn by

SYLIVATUS SYLIVATUS MAYENGA, an Advocate on behalf of the applicant.

SYLIVATUS SYLIVATUS MAYENGA in his affidavit deposed that, soon after the said decision was delivered at the trial court on the above stated date, he on 9/9/2015 lodged a letter requesting to be supplied with the proceedings, judgment and decree. More so, the applicant once again through its Counsel wrote a reminder letter dated 22/9/2015. On 19/10/2015 the applicant successfully lodged an appeal in this honourable court christened Civil Appeal No. 19 of 2015 but on 1/7/2016 the said appeal was struck out for being accompanied with a defective decree subject of a preliminary objection raised by the respondent.

The applicant on the same date (1/7/2016) requested to be supplied with the copy of the ruling. On 20/7/2016 the applicant wrote a letter to the trial court seeking to be supplied with the rectified decree. The applicant in its

affidavit insists that, there is also an aspect of illegality in the decision sought to be challenged despite the fact that the delay was beyond its control.

On the other side, Mr. SIMON SHUNDI MRUTU an Advocate for the respondent in the counter affidavit strongly opposed the application. He insisted the delay has been occasioned by the negligence of the applicant's counsel for filing an incompetent appeal in the court.

On 13/2/2018 when this matter was called for hearing, Mr. SILVANUS MAYENGA and ROMAN MASUMBUKO learned Counsel appeared for the applicant and respondent respectively. Basically Mr. SILVANUS submitted as I have summarized earlier from his Affidavit. In regards the issue of illegality, he clarified that the trial court had no jurisdiction to entertain the matter. He invited the court to a decision of this court in the case of **Inter-best Investment Company Versus Standard Chartered Bank Limited, Miscellaneous**

Civil Application No. 463 of 2014. Further the counsel submitted that there was yet a pertinent issue that, the trial court granted reliefs which were not pleaded. In order to back up this argument, he referred this court to the case of **mrs. mary kahama (attorney of georgia george kahama) and another versus H.A.M. import (t) ltd and 2 others, civil application no. 52/17 of 2017 (CAT-dsm) (unreported).**

The learned Counsel concluded that, as there was a technical delay, then the court should proceed to grant the extension sought. He pegged this argument to the authority found in the case of **Fortunatus Masha Versus William Shija [1997] T.L.R 154.**

In reply, Mr. Roman learned counsel submitted that in his understanding the main reason advanced by the applicant is that, he is not to be subjected to any blame for the delay since the first appeal was struck out for being

accompanied by a defective decree. However, Mr. Roman submitted that there is no attached copy of the said defective and improper decree. According to him this presupposes lack of diligence on the part of the applicant which in law does not suffice as a sufficient ground for the court to do that which it is asked to grant. He referred this court to the cases of **TANZANIA PORTS AUTHORITY VERSUS MS. PEMBE FLOUR MILLS LTD, CIVIL APPLICATION NO. 49 OF 2009 (CAT-DSM)(UNREPORTED)** and **BANK OF TANZANIA VERSUS SAID MARINDA AND 30 OTHERS, CIVIL APPLICATION NO. 150 OF 2011 (CAT-DSM) (UNREPORTED)**.

Mr. Roman was of a further opinion that, the issue of illegality is irrelevant herein since the alleged want of jurisdiction has never been subject of the decision in the first appeal. More so there is no attached judgment to enable this court to assess the reliefs that had been sought. In view thereof the court is not at the moment in the position to

predict the merits of the appeal. Mr. Roman Masumbuko lamented that, the applicant's counsel is raising issues from his chambers. He prayed the application be dismissed with costs and the dispute put to an end as laid down by the cardinal principles of law.

In his rejoinder, Mr. Silvanus opposed Mr. Roman's position in regards to the non-attachment of judgment, he submitted the same has been attached in the affidavit in paragraph 3.

The issue is whether the applicant has sufficient reasons for the court to grant the sought extension. In the case of **VODACOM FOUNDATION VERSUS COMMISSIONER GENERAL (TRA), CIVIL APPLICATION NO. 107/ 20 OF 2017 (CAT-DSM) (UNREPORTED)** at pages 9 and 10, Hon. Mwambegele, J.A had this to say and I quote;

'...Delay even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken...Those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence.'

[Emphasis is mine]

I have gone through the respective submissions from both camps as well as the court record, there are material facts not disputed by either party. It is admitted that the trial court delivered its decision on 25/8/2015 and on 9/9/2015 the applicant wrote a letter requesting to be supplied with the copies of the proceedings, judgment and decree. Further on 22/9/2015 the applicant wrote a reminder letter and on 19/10/2015 filed an appeal with this court. On 1/7/2016 the said appeal was struck out for bearing a defective decree. The court record also reveals the

applicant on 21/7/2016 wrote a letter to the trial court requesting to be supplied with the copy of the rectified decree and on 26/7/2016 the applicant filed the instant application. In my settled view, the sequences of events from the date when the disputed decision was delivered by the trial court to the time when the instant application was filed herein clearly indicate the applicant was vigorous and active in pursuing its right of appeal against the said decision.

It has been observed that at each stage the applicant had acted promptly. The circumstances reveal that the delay in filing the intended appeal was well beyond the applicant's control. To borrow the words of the applicant's counsel, it was purely "*a technical delay*". This court is thus satisfied that the applicant has demonstrated sufficient reasons to warrant the grant of the extension sought as per

the condition envisaged in section 14 (1) of the law of limitation Act, Cap 89 RE: 2002.

From the above stated reasons, I hereby allow the applicant to file its intended appeal **within thirty (30) day** from the date of this ruling. This application is allowed with no order to costs.

It is so ordered.

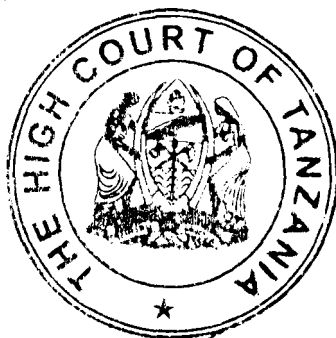



B.R. MUTUNGI

JUDGE

7/3/2018

Read this day of 7/3/2018 in the presence of Mr. Mrutu for the respondent and Mr. Mrutu holding Mr. Manyenga's brief for the applicant.




B.R. MUTUNGI

JUDGE

7/3/2018

Right of Appeal Explained.




B.R. MUTUNGI

JUDGE

7/3/2018