

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

MISC CIVIL APPLICATION NO. 565 OF 2017

(Originated from Civil Appeal No. 99 of 2016 of Temeke District Court and Decision of Temeke Primary Court in Mirathi No. 218/ 2013)

**DHARAU MUSSA (Administrator of the estate of deceased
ABDALLAH SALUM MKUMBA)APPLICANT**

VERSUS

**MWEMA MWINGE (As an administrator of the estate of late
ATUJUANI ABDALLAH SALUM MKUMBARESPONDENT**

R U L I N G

Before is an application for extension of time to lodge an appeal from the decision of the District Court of Temeke in its appellate jurisdiction from a Primary Court.

The application which is preferred under Rule 3 of the Civil Procedure (Appeals in proceedings originating in Primary Courts) Rules GN No. 312 of 1964 (the Rules) and section 25(1) (b) of the Magistrates Courts Act, Cap 11 [RE 2002] is by way of chamber summons supported by the Applicant's own affidavit. The Respondent resists the application on the ground that the Applicant has not disclosed sufficient cause for the delay.

From the affidavit and counter affidavit it is common ground that the decision of the District Court sought to be appealed against was made on 08th June, 2017 and on 10th July 2017, the Applicant delivered to the

District Court a written request for a copy of that decision for his own records.

It is equally common ground that the District Court supplied a copy of the said judgment on 12th August, 2017 and on 07th September, 2017 the instant application was filed. In terms of section 25(1) (b) of the Act requires an appeal from the District Court to this Court to be lodged within thirty days from the date of the decision sought to be appealed against. That section gives power to this Court to extend the time prescribed for an appeal.

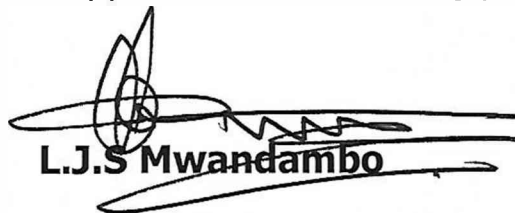
The reason advanced behind the delay is that the first appellate Court delayed in supplying a copy of Judgment to the appellant. It further averred in para 2 of the affidavit that the District Court entertained Civil Appeal No. 99 of 2016 which was the same appeal in Civil Appeal No. 47 of 2014 dismissed earlier for being time framed. The Respondent has just taken note of the above amendments.

From the forgoing, the Applicant impresses upon the Court to find that sufficient cause has been shown for the exercise of discretion under section 2J (1)(b) the Act read together with Rule 3 of the Rules.

The parties to this application are lay persons who have filed their submission for and against the application. What I can glean from the Applicant's submission that there is an illegality in the decision sought to be appealed against because the District Court entertained the same appeal twice which constitutes sufficient ground for extension of time on the authority of ***Veronica Fubile V National Insurance Corporation and 3 Others CAT Civil application No. 168 of 2008 (Unreported)***

The Respondent has said nothing to displace the Applicant's argument on that point and I need not be detained any more on this. Although merits of illegality is not a subject of this application, on the authority of *Fubile V National Insurance Corporation and 3 others (Supra)* and various other decisions of the Court of Appeal cited therein a claim of illegality of the challenged decision constitutes sufficient cause for extending time regardless whether the Applicant gives reasonable explanation for the delay. Accordingly I will grant the application on this ground which makes it superfluous for me to determine the other grounds canvassed in the parties submissions.


In the event the application for extension of time to lodge an appeal from the decision of the District Court of Temeke is hereby granted. The Applicant is granted thirty (30) days to lodged his appeal. Cost shall abide the outcome of the intended appeal. Order accordingly.


L.J.S Mwandambo
JUDGE

26/02/2018

Court

Delivered on 27/02/2018


L.J.S Mwandambo
JUDGE

27/02/2018

