

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. CIVIL APPLICATION NO. 3 OF 2019

*(Arising from Probate Appeal No. 1 of 2018 of Songea District Court,
originating from Probate Cause No. 21 of 2017 of Songea Urban Primary
Court)*

BURKARD KAYOMBO APPLICANT

VERSUS

MWANAKOMBO ATHUMAN RESPONDENT

Date of Last Hearing: 16/06/2020

Date of Ex Parte Ruling: 16/07/2020

EX PARTE RULING.

I. ARUFANI, J.

The applicant, Burkard Kayombo filed in this the application at hand seeking for extension of time within which he can lodge in this court an appeal out of time prescribed by the law. The application is made under section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2002 and section 95 of the Civil Procedure Code, Cap 33 R.E 2002 and is supported by the affidavit sworn by the applicant. After the respondent failed to appear in the court and the court being satisfied she was served and is aware of the pendency of the application in the court and as she has not filed her counter

affidavit in the court to resist the application the court ordered hearing of the application to proceed ex parte.

During hearing of the application the applicant appeared in the court in person and argued the application himself. He told the court is seeking for leave to appeal out of time against the decision made by the District Court of Songea dated 10th May, 2018. He said the judgment he intend to appeal against was delivered on 23rd April, 2018 and it was certified and signed on 23rd May, 2018. He told the court that, the reason for failing to appeal within the time is because he was not supplied with the copy of the judgment of the District Court of Songea on time.

He argued that, after the judgment being delivered he wrote a letter to the District Court seeking for copy of judgment and expressing his intention to appeal to this court but he was not supplied with the copy of the judgment delivered by the District Court on time. He told the court that, after the District Court failed to supply him with the copy of the judgment he wrote a complaint letter to the Judge Incharge of this court on 30th May, 2018 and he was supplied with the copy of judgment of the District Court on 5th June, 2018.

He told the court that, after getting the copy of the judgment and read it he discovered his right to appeal was closed by the District Court. He said to have written another letter to the Judge Incharge and Deputy Registrar of this court complaining about the denial of his right to appeal made by the District Court and he was told he can appeal to this court by using the copy of judgment of the District Court supplied to him. He stated that, after being

informed he can appeal to this court against the impugned judgment of the District Court he faced another problem as he found the copy of judgment of Songea Urban Primary Court supplied to him which was the original decision of their matter had not being signed.

He told the court that, he didn't get co-operation from the District Court to facilitate the copy of the judgment of Songea Urban Primary Court to be signed until when he complained to the Deputy Registrar of this court is when he ordered the copy of the judgment of Songea Urban Primary Court to be signed and supplied to him. He told the court further that, the copies of the judgment of the District Court and that of Songea Urban Primary Court are annexed in his affidavit. At the end he submitted that, those are the reasons caused him to delay to appeal against the impugned decision of the District Court within the time prescribed by the law and prayed his application to be granted.

After considering the submission made to this court by the applicant and going through the affidavit supporting the application the court has found that, as the application is made under section 14 (1) of the Law of Limitation Act the issue to determine in this application is whether the applicant has satisfied the court he was delayed by reasonable or sufficient cause to appeal within the time prescribed by the law. The reason for framing the above issue is because that is what is required by section 14 (1) of the Law of Limitation Act upon which the application at hand is made. For clarity purpose the said provision of the law states as follows:-

*"Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application**, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."* [Emphasis added].

The question to determine here is what constitutes the term "reasonable or sufficient cause" used in the above cited provision of the law. The court has found that term is not defined in the Law of Limitation Act or in any other law. The reason for not defining the mentioned term in the statutes was stated in the case of **Emmanuel Billinge V. Praxeda Ogweya & Another**, Misc. Civil Application No. 168 of 2012, HC at DSM (unreported) where Mwandambo, J (as he then was) stated that:-

"What constitute reasonable or sufficient cause has not been defined under the section because that being a matter for the courts discretion cannot be laid down by any hard and fast rules but to be determined by reference to all circumstances of each particular case."

The court has found some of the factors which have been taken into consideration in different decided cases as sufficient cause for granting extension of time for doing anything required to be done within a certain period of time prescribed by the law were stated in the case of **Tanga Cement Company Limited V. Jumanne D. Masangwa and Another**,

Civil Application No. 6 of 2001 (unreported) where Nsekela, JA (as he then was) stated that:-

"What amount to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."

Applying the factors stated in the above cited case in the case at hand the court has found that, although the applicant deposed at paragraph 8 of his affidavit that the impugned judgment was delivered on 10th May, 2018 but the copy of the impugned judgment annexed in his affidavit shows it was signed on 23rd April, 2018 and certified as a true and correct copy of the original on 23rd May, 2018. That being the position of the matter the court has found that, even if it will be taken the impugned judgment was delivered on 10th May, 2018 as deposed by the applicant but it cannot be said the application at hand was brought to the court promptly as stated in the above cited case.

The court has arrived to the above finding after seeing that, although the applicant was required by the law to file in court his appeal within thirty days from the date of the impugned judgment but the application at hand was filed in the court on 18th February, 2019 which is after the elapse of almost nine months from when the judgment was delivered. In the premises the court has found it cannot be said the application at hand was brought to the court promptly.

Coming to the requirement of giving explanation for the delay the court has found the explanation for the delay given by the applicant to the court as deposed at paragraph 9 of his affidavit is that, the magistrate who decided their matter in the District Court of Songea failed to state or grant the parties right to appeal when the judgment was delivered. The appellant deposed further at paragraph 10 of his affidavit that, he thought the only remedy he had was to file a fresh Probate and Administration cause in the Primary Court as ordered in the impugned judgment of the District Court and when he came to discover he can appeal against the impugned judgment he found he was out of time prescribed by the law to appeal. The court has considered the above explanation for the delay but failed to see any merit in it.

The reason for coming to the above finding is because the applicant has not told the court if there is any law or principle of law stating if parties to a case have not being informed they have a right to appeal against a decision made by a court they cannot appeal against the decision of the court. To the view of this court right of parties to appeal against a decision of a court or any other legal body having jurisdiction to make decision is provided under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time and laws governing cases determined by our courts or other legal bodies.

To the view of this court where a right to appeal against a decision made by a court or any other body having jurisdiction to make a decision is provided by the law a party aggrieved by the decision of the court or legal body can appeal to a higher court or body having jurisdiction to entertain the appeal notwithstanding the fact that the court or body made an

impugned decision has not informed the parties have a right to appeal against its decision. In the premises the court has failed to see any merit in the explanation given by the applicant that he delayed to appeal within the time prescribed by the law because the Senior Resident Magistrate who determined their matter failed to explain to them they had a right to appeal against the decision he made in their matter.

Nevertheless, the court has found that, while the applicant deposed in his affidavit that the reason for his delay to appeal within the time prescribed by the law is because the magistrate who decided their matter failed to explain to them their right to appeal against his decision but the applicant told the court at the hearing of the application at hand that, after the judgment being delivered he wrote a letter to the District Court of Songea showing his intention to appeal against the decision of that court and requested to be supplied with the copy of the judgment but the copy of the judgment was not supplied to him until 5th June, 2018. This make the court to find that, the reason deposed in the applicant's affidavit that he delayed to appeal within the time prescribed by the law because he was not informed he has a right to appeal is not a true reason because he has stated in his submission he delayed to appeal because he was not supplied with the copy of judgment of the District Court of Songea on time.

The court has also found the applicant told the court that, after being supplied with the copy of judgment by the District Court of Songea and found it has not been stated therein that he has a right to appeal he wrote a letter to the Judge Incharge and Deputy Registrar of this court to complain about that situation and he was informed he can appeal against the impugned

decision. The court has found the applicant stated further that, he faced another problem of being supplied with the copy of judgment of Songea Urban Primary Court which had not being signed and after making a complaint to the Deputy Registrar of this court is when the said copy was signed. The court has considered the above arguments and find it is not only that the stated facts are not deposed in the affidavit of the applicant but there is no evidence to show the applicant made the stated complaint to the stated authority and when the said complaint was made for the purpose of accounting for each day of the delay.

Moreover the court has found that, as the decision which the applicant states he want to appeal against was a decision made in an appeal originated from Primary court there was no legal requirement for him to get the copies of the decisions of the Urban Primary Court and the District Court before lodging his appeal in this court. What he was required to do is to prepare and file his petition of appeal in the District Court and the District Court would have forwarded his petition of appeal together with the record of the District Court and the Urban Primary Court to this court. The above stated position of the law is getting support from what was stated in the cases of **Abdallah S. Mkumba V. Mohamed Ililame**, [2001] TLR 326 and **Gregory Raphael V. Pastory Rwehabula**, [2005] TLR 99 where it was stated inter alia that, in instituting appeals in matters originating from Primary Courts there is no requirement of attaching copies of decree and judgment with the petition of appeal as the filing process is completed when the petition of appeal is filed in the District Court.

The above stated finding has made the court to find the applicant has not been able to give the court valid explanation for his delay to appeal within the time. The court has also found it cannot be said the applicant was diligent in pursuing his right to appeal after seeing he delayed for almost nine months to bring the application to the court after being supplied with the copy of the decision he stated he was seeking from the District Court of Songea. In the premises the court has found there is no reasonable or sufficient cause which can move the court to exercise its discretionary power to grant the applicant extension of time to lodge his appeal in this court out of time. Consequently, the application is hereby dismissed with no order as to costs.

Dated at Songea this 16th day of July, 2020



I. ARUFANI

JUDGE

16/07/2020

Court:

Ruling delivered today 16th day of July, 2020 in the absence of both parties. The applicant is well aware the matter is coming for ruling today but is absent without any information to the court as to why he has failed to

appear in the court. The parties to be supplied with the copy of the ruling of the court and whoever is aggrieved he can appeal to the Court of Appeal.

I. Arufani

I. ARUFANI

JUDGE

16/07/2020