

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CIVIL APPLICATION NO. 3 OF 2021

(C/O Probate Administration Revision Cause no 1/2018 Mlele District Court,
Originating from Probate Cause No. 2/2017, 2/2017 and 1/2018 Inyonga
Primary Court)

DOMINIC LEONARD MBALUKU APPLICANT

VERSUS

FESTO CLEMENT KAMSINI 1st RESPONDENT

LYIDIA CLEMENT KAMSINI 2nd RESPONDENT

RULING

Date: 20/07/2021 & 02/08/2021

Nkwabi, J.:

The applicant is seeking extension of time for filing appeal out of statutory time. The application is supported by the affidavit of Mr. Baltazar Sichilima Chambi, learned counsel for the applicant.


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The respondents resisted the application. They each filed a counter affidavit refuting the application by the applicant.

In his supporting affidavit, the applicant averred that he filed the appeal on time after time was extended to file one but the Deputy Registrar, wrongly rejected it until it was admitted by the Honourable Judge incharge, but that was already out of time.

This averment was not countered by the respondent in their counter affidavits hence the averment by the applicant was tantamount admitted by the respondents hence, the applicant accounted for each day of the delay.

That is in total compliance of **Civil Application No. 218 of 2016 Interchik Company Limited v Mwaitenda Ahobokile Michael** (unreported) delivered by Hon. Ndika, Justice of Appeal, where he had these to say at page 12:

It is this Court's firmly entrenched position that any applicant seeking extension of time under Rule 10 of the Rules is required to account for each day of delay.


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In paragraph 5 of the affidavit in support of the application for extension of time, the applicant is averring illegality of the decision that it is based on non-existing or wrong provision of the law and the applicant being condemned without being given an opportunity to be heard. This averment too was not countered by the respondents in their counter affidavits which is equal to admission, see **Mosses Ndosu v Suzana Ndosu, Misc. Land application no 117 of 2013** S. Moshi, J. was cited with approval in the case of **Emmanuel Gidahotay v Gambanyashita Muhale Misc land application no 41 of 2017** Maige, J. *"that failure to file a counter affidavit is a signification that the application is not factually opposed"*

The allegation of illegality in decisions sought to be challenged is sufficient ground to give extension of time. I proceed to extend and allow the applicant to file an appeal out of time since the applicant has placed before this court the materials that this court needs to extend time for filing an appeal just as per **Regional Manager TANROAD Kagera v Ruaha Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM (Unreported):**

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the

circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."

Consequently, the application is granted. The applicant is given 21 days within which to file his appeal. The 21 days start running from 3rd day of August 2021.

It is so ordered.

DATED at SUMBAWANGA this 2nd day of August, 2021




J. F. Nkwabi

JUDGE

Court: Ruling delivered in chambers this 2nd day of August 2021 in the absence of the applicant though with notice from Medadi Lutaisile and in the presence of the 1st Respondent but in the absence of the 2nd Respondent.




J.F. Nkwabi

JUDGE