

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**CIVIL APPLICATION NO. 99/08/2017**

**FELISTER MAGAYANE .....APPELLANT**

**VERUS**

**MABULA GENGE .....RESPONDENT**

**(Application for Extension of Time from the Ruling  
of the High Court of Tanzania at Mwanza)**

**(Matupa, J.)**

**dated the 14<sup>th</sup> day of April, 2016**

**in**

**Misc. Land Application No. 107 of 2015**

**RULING OF THE COURT**

1<sup>st</sup> & 11<sup>th</sup> October, 2018

**MWARIJA, JA.:**

In this application, the applicant, Felister Magayane seeks an order granting her extension of time to institute an application for revision. She intends to apply to the Court to revise the ruling of the High Court (Matupa, J.) in Miscellaneous Land Application No. 107 of 2015.

The application, which has been brought under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), is supported by the applicant's affidavit sworn on 20/10/2016.

On 1/10/2018 when the application was called on for hearing, both parties appeared in person, unrepresented. Before the matter could proceed to hearing, the respondent, Mabula Genge, wanted to impress upon the Court that he was not prepared for hearing on contention that he had not been served with the record of the application. His allegation was opposed by the applicant. She said that the record was sent to the respondent but refused to receive it.

It is indeed true that the respondent refused service. According to the affidavit of the process server, Jackson Tinako sworn on 16/11/2016, the record was sent to the respondent but refused to receive it. The process server made the following endorsement in the affidavit after the statement that he tendered a copy of the record to the respondent:

*"AMEKATAA KUPOKEA AMESEMA HANA KESI."*

Since therefore, the respondent was not speaking the truth but a lame excuse intended to delay the hearing of the matter, hearing of the application had to proceed.

The applicant, who had filed her written submission, adopted the same and prayed that her application be granted. In the written

submission, she submitted that she was late in filing the intended application within the prescribed time because she was waiting for certified copies of the proceedings, ruling and extracted order of the High Court (the Copies). By virtue of the provisions of Rule 65 (4) of the Rules, the prescribed period for filing an application for revision is 60 days from the date of the decision sought to be revised. It was after she had obtained the Copies on 19/10/2016 that the applicant lodged this application.

The fact that the applicant applied for the Copies on 15/4/2016 and obtained them on 19/10/2016 is stated in paragraphs 5 and 6 of her affidavit as follows;

*"5. That I applied for a copy of ruling in Misc. Land Application No. 107 of 2015 on 15<sup>th</sup> April, 2016 with my application letter with Ref. No. Misc. Land Application No. 107/2015 dated 14<sup>th</sup> April, 2016. Hereby attach the same and marked Annexure 'G'.*

*6. That I succeeded to obtain copy of Ruling and extracted order on 19<sup>th</sup> day October, 2016. Hereby*

*attached Deposit Receipt No. 360262 dated 19<sup>th</sup> day of October, 2016 and marked Annexure 'H' ”.*

The respondent did not file an affidavit in reply. In his response to what was submitted by the applicant, he maintained that he was not served with the record of the application, the allegation which had been found to be baseless.

From the record, the decision sought to be revised was handed down on 14/4/2016. According to her affidavit, which has not been opposed, after having been dissatisfied with that decision, the applicant wrote a letter to the Deputy Registrar of the High Court, Mwanza applying for the Copies. The letter is shown to have been received by the Registrar on 15/04/2016. She was supplied with the Copies on 19/10/2016. This is evidenced by the cash deposit slip attached to her affidavit as Annexure “H”.

Rule 10 of the Rules, under which the Court has been moved, provides that extension of time may be granted when the applicant has shown a good cause for the delay. In this case, it has not been disputed that the applicant was awaiting to be supplied with the Copies so as to file

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S. J. Kainda —  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

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