

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(PC) CIVIL APPEAL NO. 93 OF 1997

(Originating from Kinondoni District Court Civil

Appeal No. 9 of 1997)

HAMISI ATHUMANI.....APPELLANT

VERSUS

1. JUMANNE MAKAMBI)
2. KONDO MATEMBELE).....REPOUNDENT
3. IDDI KIWAMBA)

R U L I N G

KALEGEYA, J.

Hamisi Athumani, Applicant, dissatisfied with the judgment of Kinondoni District Court appealed to this court. On 30/7/97 the said appeal was summarily rejected, the court holding,

"The Appeal lacks any merit. There is no evidence to establish ownership of the disputed plot by the late brother of the appellant. The Appeal has been filed without any cause for complaint".

The Applicant seeks to challenge that finding before the Court of Appeal of Tanzania. Unfortunately he was late in taking the necessary steps. He has filed a chamber summons supported by an affidavit praying for extension of time to:-

- "(a) To file notice of Appeal
- (b) To file leave to appeal to Court of Appeal
- (c) To institute the intended appeal to the Court of Appeal
- (d) To make an application for a certificate that there are points of law involved in its appeal".

The Applicant was assisted by Ms. Washokera, Advocate, on Legal Aid basis. The Respondents did not make their appearance when the matter came before the Court for hearing, and in consequence thereof, Applicant was allowed to prove his application by written submission hence the present ruling. In both the affidavit and written submissions the Applicant states that it took time for him to become aware of the order for Summary rejection; that he was sick and had to attend a local medicineman and that when he finally got the order he had to seek legal aid assistance. Further to the above grounds he states that there are pertinent points of law involved.

Upon full consideration of the submissions I am satisfied that this is a fit case in which an application for extension of time should be granted. Procedurally when cases are placed before judges for admission or otherwise parties are not invited to attend. A judge goes through the record and makes a decision - whether to admit or summarily reject it: even the use of the term "summary" tells it all. Naturally therefore, in most cases, by the time such order comes to the notice of the parties the statutory period within which to take essential steps would have elapsed. The present case is not an exception. For the reasons stated the application is allowed. Time will start to run from the date of the delivery of this ruling.

(L. B. Kalegeya)

JUDGE

Delivered on.....21/12/98.....

(L. B. Kalegeya)

JUDGE