

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

MISC. APPLICATION NO.250 OF 2004

ANNA HAULE APPLICANT

VERSUS

SALUM ALLY.....RESPONDENT

RULING

MANENTO, JK:

This is an application for grant of leave to hear an appeal out of time. The chamber summons which is supported by an affidavit of one Anna Haule is made under section 76 and 95 of the Civil Procedure Code, 1966. Section 76(1) of the Civil Procedure Code gives the High Court power to determine a case finally. And however, it does not deal with the issue of extension of time to file an appeal out of time, which is the subject matter in this application.

In his 2nd paragraph of the affidavit, the applicant deponed as follows:-

2. That I had filed an appeal No.102 of 2004 originating from District Civil Appeal No.60/2003 Temeke District and Mbagala Civil Case No.63/2002 Primary Court

before the High Court of Tanzania which was being heard by his lordship MANDIA who on the 19/09/2004 ordered that the appeal was out of time and thus an order for withdrawal of an appeal was granted for the purpose of making fresh application of appeal out of time.


That is the only paragraph of the affidavit dealing with the issue of the grant of leave to file an appeal out of time. The other paragraphs 3,4,5,6 & 7 are grounds of appeal, which appeal is not yet allowed to be filed and heard. The respondent too filed a counter affidavit in which he attached the affidavit of the applicant in its jurat and secondly that the applicant has never or at all given reasons why she should be allowed to file an appeal out of the time of limitation.

The application was urged by way of written submissions. The applicants submitted that leave be granted because being a lay woman, she is ignorant of the laws. Like the affidavit, the written submissions are mainly dealing with grounds of appeal rather than the cause of the delay. The cause of the delay to appeal is just ignorance of the law. That is also the submissions of the respondent.

In the absence of the ruling of hon. Mandia, J. I would take that the appeal was dismissed because it was filed out of time allowed to

file such an appeal. If that was the case, then the issue was finally determined. But if the applicant had been allowed to withdraw the appeal so that she could first open the doors for filing the appeal, by way of chamber summons for the grant of leave to file an appeal out of time, then she has miserably failed to given reasons why the application should be granted. Ignorance of the law is not an excuse.

Having said so, the chamber summons lacks merits. The applicant have failed to justify why she was late to appeal in time and so the application is dismissed with costs.


A.R. Manento
JAJI KIONGOZI.

31-10-2005

Coram; E. Mbise, DR-HC

For the Applicant – Present in person

For the Respondent – Present in person.

Cc: Livanga.

Court: Ruling read on 31/10/2005 in the presence of both parties in persons.

E. Mbise
DEPUTY REGISTRAR HIGH COURT
31/10/2005