

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

-----

**MISC. CIVIL APPLICATION NO. 28 OF 2003.**

**ASHA SAIDI ..... APPLICANT**

**VERSUS**

- 1. GIVEN MANYANGA..... 1<sup>ST</sup> RESPONDENT**
- 2. MORGAN MANYANGA .....2<sup>ND</sup> RESPONDENT**

*Date of last Order: 1/12/2005*  
*Date of Ruling : 05/12/2007*

**RULING.**

**Mlay, J.**

This ruling is on an application for extension of time for filing an appeal to this court, against the ruling of the Resident Magistrate Court of Dar es Salaam at Kinondoni, in Civil Application No. 25 of 2007. The application has been brought under Section 14 (1) of the Law of Limitation Act, 1971 together with section 25 (1) (b) of the Magistrates Courts Act, 1984 and it is supported by the affidavit of ASHA SAIDI, the applicant. In the affidavit the applicant has deposed inter alia, as follows:

1. ....
2. That I am aggrieved by the ruling of Kinondoni Resident Magistrate's Court given on 6/11/2002 and certified on 2/12/2002 and lodged notice of intention to appeal to the High Court.
3. That the drawn order from Kinondoni Court was ready for collection and was collected on 30/12/2003/
4. That I could not timely file my appeal as I was looking for a lawyer to assist me in processing the Appeal.
5. That on the process of looking for an Advocate I realized the thirty (30) days have elapsed.
6. That the intended appeal raises important and interesting points of law if allowed to file it out of time
7. that what I have stated here in above is time (sic) to the best of my own knowledge.

The application was filed on 7/2/2003. The respondents did not file a counter affidavit but at the hearing of the application, they were represented by Mr. Semgalawe while Mr. Hyera appeared for the applicant.

In his oral submission Mr. Hyera told this court that the main ground in the application is that the applicant was seeking the services of an advocate to help her to file the appeal. He also contended that the respondents having not

filed a counter affidavit, they are not contesting the application.

Mr. Semgalawe vigorously resisted the application. He submitted that in the application which has been brought under section 14 (1) of the Law of Limitation Act, 1971, it is required for the applicant to show sufficient reason why the applicant was late to file the appeal.

He contended that in the applicants affidavit, she has failed, to show sufficient reasons why she was late to file the appeal from 2/12/2002 until 7/2/2002, when she filed the present application. Mr. Semgalawe referred to paragraph 2 of the applicant's affidavit, in which she deposed that she was aggrieved by the decision as from 6/11/2002. Mr. Semgalawe argued that the applicant should have looked for an advocate then. He argued that instead the applicant took three months to find an advocate, a period which Mr. Semgalawe argued was too long.

In reply Mr. Hyera asked this court to exercise its discretion to grant an extension of time because the applicant is a lay person.

This application has been brought under section 1 (1) of the Law of Limitation and section 25 (1) (b) of the Magistrates

Courts Act, 1984. It appears from the ruling intended to be appealed and from the Chamber Summons by quoting Section 25 (1) (b) of the Magistrates Courts Act, 1984 that, the proceedings involved in the proposed appeal, originate from the Primary Court. Section 25 (1) (b) of the Magistrates Courts Act 1984 provides that any person if aggrieved by the decision or order of a district court in the exercises of its appellate or tentional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court.

*“Provided that the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired”.*

As section 25 (1) of the Magistrates Courts Act prescribes the period of limitation for filing appeals to the High Court in proceedings originating from this Primary Court, and the manner of extending the period of limitation, there is no need for recourse to the provisions of section 14 of the Law of Limitation Act, 1971.

The procedure of making application for leave to appeal out of time is provided for under Rule 3 of the Civil Procedure Appeals in Proceedings Originating in Primary Courts) Rule 1984, GN 312/1964, which states:

*“3. An application for leave to appeal out of time to a district court from a decision or order of a primary court on to the High Court from a decision of a district court in the exercise of its appellate or revisional jurisdiction shall be in writing, shall set out the reasons why a petition of appeal was not or cannot be filed within thirty days after the date of the decision or order against which to is desired to appeal and shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order”.*

It seems to me that by reason of the clear words of section 25 (1) (b) of the Act and Rule 3 as referred to above, section 14 of the Law of Limitation Act 1971 does not apply to appeals from proceedings originating from the Primary Court.

The applicant has attributed the delay to file the petition of appeal within 30 days, to two reasons. The first reason is that she was waiting for the copy of judgment and the drawn order. As for this reason, one needs to refer to Rule 4 of GN 312 of 1964 which provides.

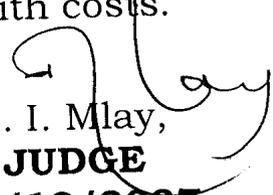
4- (1) *Every petition of appeal to a district court from a decision or order of a primary court and every petition of appeal to the High Court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against and shall be signed by the appellant or his agent.*

*(2) Every petition of appeal that the High Court shall be filed in duplicate.*

Regulation 5 further provides for registration of appeals originating from Primary Courts. There is nowhere in the regulations where it stated that a copy of the judgment or decree should be attached to the petition of appeal. If the appeal is delayed by reason of waiting for such documents, which are not required by law to be appended to the petition of appeal, the period for such delay is not deductible, as the Law of limitation Act 1971 does not apply. The period within which to file the petition of appeal began to run from the date 6/11/2002 and not from the date when the copy of the ruling or drawn order, was obtained. The time of appealing ran out

on 7/12/2003, long before the applicant started looking for a lawyer.

The applicant did not state when she obtained a lawyer. If the date of affirming the affidavit is taken into consideration which is 7/2/2003, this application has been made three months after the decision intended to be appeal. Three months is too long a period to look for a lawyer in Dar es salaam. There are no sufficient reasons for the delay to file the petition of appeal within the prescribed time. The issue is whether there are sufficient reasons other than the reasons for delay, to extend the time. Regulation 3 of GN 312 of 1964 requires that an application for leave to appeal out of time "**shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order**". These are mandatory provisions but the present application has not complied with the said rule as no such petition of appeal or grounds of objection have been set out in the present application. In the circumstances, the court has nothing to act or to determine of there otherwise other sufficient reasons and as the applicant has not complied with the mandatory provisions of the Rules this application is incompetent, and it is accordingly struck out, with costs.

  
J. I. Mlay,  
**JUDGE**  
**05/12/2007**

Delivered in the presence of Mr. Hyera advocate for the Applicant and in the absence of the Respondents, the 11<sup>th</sup> day of December, 2007.



J. I. Mlay,  
**JUDGE**  
05/12/2007

**Words: 1,340**