

IN THE HIGH COURT OF TANZANIA
AT TABORA

MISC. CIVIL APPLICATION NO. 37/2002
(Arising from Nzega D/Court Matr. Appeal No. 16/2002 &
Original Mwangoye P/Court Matr. Case No. 7/2007)

MBOJE s/o SHIJA.....APPELLANT

Versus

NDUGULILILE.....RESPONDENT

R U L I N G

6th June, 03 & 5th May, 07

MUJULIZI, J.

After hearing the application, and argument of both parties, it is clear that it would be in the interest of justice that the application be granted in order to allow for a final and conclusive determination of the dispute.

The Applicant has raised one single ground that he was sick. He has attached a medical cheat. Although the Respondent questions the authenticity of the same, I am satisfied that it suffices for purposes of this case.

The Applicant obtained copy of the judgment on 30/10/2002. He filed his application on 13/11/2002. In terms of section 25 (1) Magistrates' Courts Act (Cap 11 R.E. 2002) he was required to file his Petition of Appeal within 30 days. In terms of the Law of Limitation Act (Cap 89.R.E. 2002) the time taken in obtaining the copy of the judgment is excluded in counting the time.

It is therefore clear to me that he was still within time. There is a copy of the petition dated 8th November, 2002. If he had presented it, it could have been in time. A copy is on file.

In any event he acted promptly although labouring under the mistaken belief that he his appeal was out of time. This Court has power to extend the time either before or after the expiry of the time prescribed. But the exercise of that power is not necessary in the circumstances. In the premises let an Appeal file be opened and the Petition dated 8th November, 2002 be admitted upon payment of fees.

The application was filed under a bonafide apprehension that the Appellant was late. He wrongly counted the time from the date of the decision.

It is so ordered.



A.K. MUJULIZI

JUDGE

5/4/2007

Order:

DR: Admit the Petition of Appeal as of 13/11/2002 when it was presented.



A.K. MUJULIZI

JUDGE

5/4/2007