

IN THE HIGH COURT OF TANZANIA

AT DODOMA

**MISC. CIVIL APPLIATION NO. 38 OF 2008
(ORIGINAL KONDOA DISTRICT COURT AT KONDOA
CIVIL APPEAL NO. 13 OF 2007 –
JANGALO PRIMARY COURT CIVIL CASE NO. 2 OF 2007)**

**ZAWADI ADAM APPELLANT
Versus
HAJARA JUMA RESPONDENT**

5/03/2009 & 31/03/2009

RULING

HON. MADAM, SHANGALI, J.

The applicant **ZAWADI ADAM** has filed this application seeking for grant of leave to appeal out of time against the decision of the District Court of Kondoa in Civil Appeal No. 13 of 2007 originating from the decision of the Jangalo Primary Court in Civil Case No. 2 of 2007.

The application has been filed under the provisions of section 33 (1) of the magistrate Court Act No. 2 of 1984 duly supported by the affidavit deponed by the applicant in person.

The litigations between the applicant **ZAWADI ADAM** and respondent **HAJARA JUMA** started back in 2004 following the acquittal of the respondent in The High Court (PC) Criminal Appeal No. 13 of 2004 originating from Kondoa District Court, Criminal Appeal No. 10 of 2003 and Jangalo Primary Court, Criminal Case No. 197 of 2002.

Having been declared innocent and set free the respondent sued the applicant before the Jangalo primary Court Civil Case no. 2 of 2007 claiming for compensation for malicious prosecution and costs incurred for conducting the criminal case against her at the tune of TShs.2,040,000/= . The trial Primary Court, unanimously found in favour of the applicant and concluded that there was no evidence to establish malicious prosecution.

On appeal before Kondoa District Court, Civil Appeal No. 13 of 2007, the first appellate District Court reversed the decision of the trial Primary Court and awarded the respondent TShs.800,000/= being the costs incurred by her in the prosecution of the case. That decision of the first appellate District Court was pronounced on 15/10/2007.

Dissatisfied with that decision the applicant is now intending to pursue a second appeal to this court, but she has found herself in contravention of the provisions of the law which provide for limitation period for filing such an appeal, hence this application.

In this application the applicant was represented by Mr. Lussa, Learned Advocate, while the respondent **HAJARA JUMA** advocated for herself.

During the hearing of this application, Mr. Lussa, Learned Advocate submitted in support of the applicant's affidavit that the delay to file the appeal was caused by the failure of the first appellate District Court to supply a copy of the judgement in which she could obtain the grounds of appeal. He contended that, on several times the applicant visited the first appellate District Court at Kondoia demanding for a copy of the judgement with no success. Mr. Lussa, argued that in such circumstances the delay was not occasioned by the applicants negligence but by the failure of the appellate District Court for not supplying the copy of the judgement in time.

The respondent strongly objected the application and in support of her counter affidavit she pleaded that there is no scintilla of evidence to establish that the delay was caused by the failure of the first appellate District Court to issue a copy of judgement. She complained that there is no evidence to show any effort taken by the applicant to follow-up her copy of judgement at the District Court if she was indeed serious with her appeal.

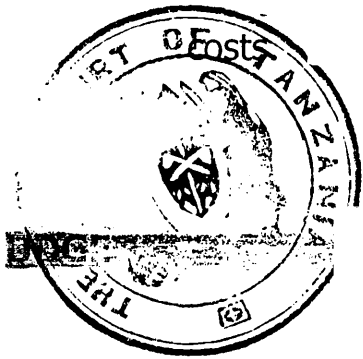
Honestly speaking, this application is short of any merit to hold this court and its bound to fail on two major reasons. **One**, the application was filed under totally and completely wrong provisions of the law. Section 33 (1) of the Magistrate Court Act 1984, Cap 11, R.E. 2002 provide for appearance on behalf of parties in Primary Courts and it has nothing to do with granting of extension of time for filing an appeal. It has been settled in this jurisdiction that citation of irrelevant provision of the law or failure to cite the relevant provision of the law from which the court derives the power to hear and determine the application is failure to properly move the court. The omission renders the whole application totally incompetent – See the recent decision in the **Criminal Application No. 1 of 2005 Marwa Maselle vs. Rep. (CAT) Mwanza Registry** (unreported).

The second reason is the fact that the applicant has failed totally to provide a reasonable or sufficient cause to justify her delay. Her mere claims that the delay was caused by the failure of the first appellate District Court to supply a copy of judgement has no leg to support. I agree with the respondent that there is no evidence whatsoever to substantiate the applicants claims that she visited Kondoa District Court Several times demanding for a copy of judgement. There is no single letter written to the said court nor evidence to show at what time she was supplied with the said copy of judgement. In his final submission, the applicant's advocate conceded that he was not sure at what time exactly they were

supplied with a copy of the said judgement and that he has no copy of the said judgement.

With due respect, there is sheer abundance of negligence on the part of the applicant and her advocate in filing and prosecuting this application. They created the delay out of their own negligence and laxiness. Their attempt to shift the blame on the first appellate District Court is nothing but an afterthought.

This application is therefore struck out and dismissed with




M.S. SHANGALI

JUDGE

31/03/2009

Ruling delivered todate 31st March, 2009 in the presence of Mr. Lussa, Learned Advocate for the applicant and the respondent in person.


M.S. SHANGALI

JUDGE

31/03/2009