

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
(APPELLATE JURISDICTION)**

**MISCELLANEOUS CIVIL APPLICATION NO. 267 OF 2015
(From the Dar es Salaam Kisutu RM'S COURT CIVIL CASE NO.97 OF 2009-
Hon.S.B.Fimbo-SRM)**

DORA PETA	APPELLANT
	Versus	
COCA COLA KWANZA LTD	RESPONDENT

Date of last Order: 14th July, 2015
Date of Ruling: 17th August, 2015

RULING

Feleshi, J.:

The applicant filed her Application under section 14(1) of the Law of Limitation Act, [Cap.89 R.E.2002] and section 95 of the Civil Procedure Code, Cap.33 R.E.2002] for extension of time to file an her appeal out of time.

The impugned judgment was delivered 30/8/2012 and on the same date the applicant applied for its certified copy for appeal purposes. According to Paragraph 4 of her Affidavit, she got the copy on 11/10/2012 and found the time limit to lodge her appeal to this Court which is thirty days had expired.

In his paragraph 4 of his Counter Affidavit, the respondent submitted *inter alia* that **"...even if the copy of the judgment was supplied on 11th October 2012 as claimed, the Respondent waited for another two months before she filed this Application on 12th December, 2012 and in any event at the time when she received a copy of judgment, the Applicant was within time limit for filing an appeal."**

In the absence of submissions filed by the parties as per this Court's order dated on 14th July, 2015, I have examined the reasons advanced in the applicant's Affidavit and the respondent's reply in his Counter Affidavit and found that the applicant did indeed misconceive the time prescribed by law for her to file her appeal in this Court. The intended appeal being one arising from a suit governed by the Civil Procedure Code, [Cap.33 R.E.2002] has its period of limitation within which to appeal governed by Part II item 1 of the Law of Limitation Act, [Cap.89 R.E.2002] which provides:

"An appeal under the Civil Procedure Code where the period of limitation is not otherwise provided for by any written law... ninety days"

In view of that provision, it is blatant fact that by the time the Applicant got the certified copy of the impugned judgment on 11/10/2012 she was well within time in terms of section 19(2) of the Law of Limitation Act (supra) which discounts the period between 30/8/2012 and 11/10/2012 she spent waiting for the certified copy of judgment. Her 90 days counted from 11/10/2012 would have come to an end on 10/1/2013 and not before that.

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however, has to be exercised judiciously and the overriding consideration is that there must be good and sufficient cause for so doing.

On ascertaining good and sufficient cause, a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any or valid explanation for the delay and lack of diligence on the party of the applicant (see **Dar es Salaam City Council v. Jayantilal P. Rajani,** (CAT) Civil Application No. 27 of 1987 and **Tanga**

Cement Company Limited v. Jumanne D. Masangwa and Amos Mwalwanda, Civil Application No. 6 of 2001 (all unreported).

Therefore, if the respondent averred in his Counter Affidavit that **this Application was filed on 12th December, 2012**, and as shown above, the Applicant's 90 days expired on 10/1/2013, I am satisfied that though she misconceived the limitation period prescribed for the appeal of that nature her action exhibits her promptness to indicate her desire to appeal which if considered together with her overreliance on WLC explains caused behind her delay. That to me constitutes sufficient cause. I grant the Application and give her 14 days within which to file her Appeal. I issue no order as to the costs. I rule accordingly.

DATED at Dar es Salaam this 17th August, 2015

E.M. Feleshi
JUDGE

Ruling delivered on this 17th day of August, 2015 in the presence of the Applicant herself and Mr. Frank Milanzi, Advocate for the Respondent.

E.M. Feleshi
JUDGE
17. 8.2015