

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
AT ARUSHA**

**MISC .CIVIL APPLICATION No: 123 OF 2017  
(Arusha District Court Civil Case No.4 of 2016)**

**FLYCATCHER SAFARI LIMITED..... APPLICANT**

**Versus**

**GURUPREET SINGH BHACHU ..... RESPONDENT**

**RULING**

**DR. OPIYO, J.**

This is an application by Chamber summons brought under section 14 (1) of the Law Limitation Act, Cap 89 R.E 2002, For an order for the extension of time within which to institute an appeal in the High Court of Tanzania against the judgement and decree of the Arusha District Court Civil case No 04/2016. The application is supported by an affidavit affirmed by Mr. Harun I. Msangi, learned Advocate for the applicant.

Before me the applicant was represented by Mr. Msangi learned advocate while the respondent was represented by Mr Ackonay, leaned advocate. The application was disposed of by the way of written submission through consensus of both parties. Submitting on the application Mr. Msangi briefly submitted that, the Applicant in this Application is seeking an extension of time to a judgment that was delivered on 22nd September, 2016 by the Arusha District Court of Arusha Civil Case No.4 of 2016. The applicant

appealed against the order and decree in the High Court Civil Appeal No. 58 of 2016 and the same was struck out on 03/8/2017 by Hon. Madame Judge S.M.Maghimbi because the decree in support of the Appeal was defective hence the appeal is defective.

He further submitted that, Section 19(2) of The Law of Limitation Act, Chapter 89 (R.E.2002) provides the time requisite for obtaining a copy of the decree or order appealed from shall be excluded. It is for above reasons they do pray for an extension of time to appeal.

Opposing the application Mr. Ackonay submitted that, without serving notice of appeal on the respondent the present applicant filed appeal to the High Court in 27<sup>th</sup> December, 2016 after 95 days. When the appeal was called for hearing the counsel for the respondent filed the two points of preliminary objection that, the appeal is time barred and the same contravenes the provision of Order XXXIX rule 1 (1) of the Civil Procedure Code, cap 33. That, the preliminary objection were argued by way written submission before Hon. Justice Maghimbi who on 3<sup>rd</sup> August, 2017 struck out the appeal on the grounds of defective decree, without considering the points of preliminary objection. The applicant then filed the present application the same is filed under section 14 of the Law of Limitation Act. (supra) which requires that in determining the application for extension of time, the court has to consider the following factors: that the application has been brought without delay the valid explanation for the

delay/sufficient cause for delay is given and the applicant exercise diligence in prosecuting his/her case.

To substantiate his argument the respondent's counsel refereed this court to the case of **Tanga Cement Company Ltd Versus Jumanne D. Masangwa and Amos A. Mwalwanda**. Civil Application No 6 of 2001 (unreported) Nsekela J.A had this to say:

*"An application for extension of time is entirely in the discretion of the court to grant or refuse it...Exercised judicially and the overriding cause for so doing what amounts to be taken into account including whether or not the application has been brought promptly without the delay, lack of diligence on the part of the applicant."*

He further submitted that, the applicant since delivery of the judgment in civil case no 4 of 2016 has been negligent in filing an appeal to the High Court of Tanzania at Arusha and the applicant filed civil appeal NO 58 of 2016 in the circumstances that he ought to have noticed that the decree attached to the memorandum of appeal was defective which rendered the court to struck out the appeal. He concluded his submission by submitting that, the applicant has failed to show good cause for delay in filing his appeal and did pray for this application to be dismissed with costs.

In his rejoinder the counsel for the applicant submitted that, in his written submission Respondent's learned Counsel in totality concedes that the

decree was defective with consequential result that the Court struck out Civil Appeal No.58 of 2017 on 03/08/2017. The defect found in the Decree was not caused by the Applicant or Respondent and it is irrational argument that the Applicant was negligent in attaching the defective decree that was later found to be defective by Court.

It was his submission that, the Advocate for the Respondent quoted several authorities that; the Court has discretionary powers to extend time to enable one to file appeal out of time. All the authorities quoted maintain that in order for the Court to extend time, the Applicant has to satisfy the Court that there are reasonable and sufficient causes for delay. The reason for the delay is well elaborated in the Applicant's written submission which in essence laid good ground that the Applicant was not in fault for the delay and that the Applicant is a deserving party for extension of time at the discretion of the Court based on the following grounds:-

- (i) The Decree for Arusha District Civil Case No.4 of 2016 was not in agreement with the judgement
- (ii) The Arusha District Court rectified the Decree and issued it on 11/10/2017. Counting from the date the judgement was delivered on 22/9/2016, the period for instituting the appeal has long expired.
- (iii) The Judgement was delivered on 22/9/2016 its decree was issued on 11/10/2017. The time spent in issuing the decree is between 23/9/2016 to 11/10/2017.

It was his submission further that, The Law of limitation Act Cap 89(R.E.2002) section 19(2) provides:-

*"19(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application or review of judgement, the day on which the judgement complained of was delivered ,and the time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed ,shall be excluded.*

It was his further submission that, the time between 23/9/2016 to 11/10/2017 be excluded together with the reasons in the affidavit and submission in chief being reasons for delay to form basis for the Court to extend time to file an appeal.

I have considered parties written submission for and against this application. As a matter of general principle, it is entirely in the discretion of the court whether to grant or refuse an application for extension of time. That discretion is, however judicial and so, it must be exercised according to the rules of reason and justice. The deciding factor being showing of "good cause" by the applicant for the delay. As to what constitutes "good cause" is dependent upon a variety of factors which may include the length of the delay, the reasons for the delay, the chances of the appeal succeeding if the application is granted, and the degree of prejudice to the respondent if the application is granted.

The reasons given by the applicant to explain his delay was that, he filed Civil Appeal No 58/2016 before this court and the same was struck out on 03/08/2017 by Hon. Madame Maghimbi, J. because the decree in support of the appeal was defective and the said decree was rectified and issued on 11/10/2017 and he filed the present application on 03/11/2017.

It is evidently, the applicant filed this application promptly after he obtained the rectified decree and, in any event I do not think that the respondent will be prejudiced any how if the application is granted. All said, the application is granted. The applicant should lodge his appeal within fourteen days (14) from the date of the delivery of this ruling. No order as to costs.

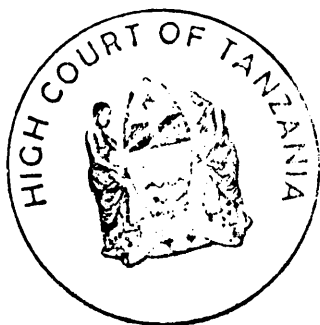
**(SGD)**

**DR. M.OPIYO,**

**JUDGE**

**24/04/2018**

I hereby certify this to be a true copy of the original.



A handwritten signature in black ink, appearing to read "A.K. RUMISHA", is written above the printed name.

*A.K. RUMISHA*

**DEPUTY REGISTRAR**

**ARUSHA**