

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT ARUSHA

MISC – CIVIL APPLICATION NO. 29 OF 2017

(Originating from Resident Magistrate Court of Arusha Civil Case No. 33 of 2014)

GENESIS H. SHIRIMA.....APPLICANT

VERSUS

SALOME LUCIAN KWEKA (Suing as a Administrator of

estate of the late William Mathayo Kiwelu.....**RESPONDENT**

RULING.

S.M. MAGHIMBI, J:

The application was brought under the provisions of Section 14 (1) of the Law of Limitation Act, Cap. 89 R. E 2002. The applicant is praying that this Court be pleased to grant to him an order for extension of time within which to file an appeal out of time against the whole judgment and decree of Resident Magistrate Court of Arusha at Arusha in Civil Case No.33 of 2014 dated 19th, October, 2016. The application was supported by an affidavit of the Applicant dated 23/03/2017. By an order the court dated 05th April, 2018 the application was disposed by way of written submission. On the onset of his submissions, Mr. Shirima prayed that the affidavit in support of this application be adopted to form part of his submissions. In his submission on the reasons for the delay; he submitted that soon after delivery of the Judgment and decree subject of the intended appeal, on 25th October, 2016 the applicant wrote a letter with reference No. GENES

/JJS-AR3/016 to the trial Court requesting to be supplied with the proceedings, Judgment and Decree so as to prepare memorandum of appeal to High Court of Tanzania. On the 22nd March, 2017, the Applicant wrote a remainder letter with Ref. No. GENES /JJS-G1/017 to the trial Court insisting to be furnished with documents in order to appeal to the High Court. That it was not until 24th March, 2017 when the Applicant was supplied with the copies of Judgment and Decree and on the same date the applicant filed this Application for extension of time. He then cited the Section 19(1) of the Cap. 89 which excludes the day on which the Judgment complained of was delivered, and the period of time requisite for obtaining a copy of the Decree or order appealed from or sought to be reviewed, while computing the limitation time.

Mr. Shirima submitted further that the historical background elaborated above and affidavit, leave no doubt that the applicant has been to the court corridors all the time seeking for his right to appeal and the affidavit has demonstrated sufficient cause for this court to grant the extension of time to the applicant. He supported his submission by citing the case of **M/s Tanzania Wildlife Corporation Vs. Frida Mwijage, Civil Application No. 2 of 2014**, (unreported) whereby the Court of Appeal held:

"In our case the reason for delay to file is that the applicants are yet to be supplied with the documents from the High Court to enable them to file revisional proceedings. No doubt the reasons advanced is good cause to extend time. The application is granted as prayed".

He then submitted that the applicant in this case was also prevented from filing the appeal in time because he was not supplied with appeal document in time. At the time when he supplied with the necessary document to appeal there had already lapsed. He prayed that this application is allowed.

In reply, the respondent submitted that the copies of the proceedings were ready for collection on the 01/02/2017 as evidenced in the copy of judgment and decree furnished to the respondent hence the documents were ready for a long time and the applicant unreasonably delayed to collect them. She hence argued that the applicant has no genuine reasons as to why he failed to file the memorandum of appeal on time. She prayed that the application is dismissed.

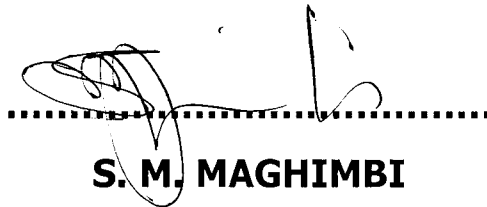
On my part I have gone through the records of this application. Indeed as argued by the respondent, the judgment of the trial court was certified on the 01/02/2017. However Order XXXIX Rule 1 of the Civil Procedure Code, Cap. 33 R.E 2002 provides:

*1.-(1) Every appeal shall be preferred in the form of memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf. The **memorandum shall be accompanied by a copy of the decree appealed from** and (unless the Court dispenses therewith) of the judgment on which it is founded.*

From the above provision, the memorandum of appeal is required to be accompanied by a copy of the decree that is a subject of appeal. As per the

records, the decree of the trial court was issued on the 24/03/2017 and it was on the same date that the applicant filed this application. Evidently, the applicant did not sleep on his right and has shown sufficient reasons to warrant this court to use its discretion to grant the orders sought. That said, this application is hereby granted. Time is extended for the applicant to file his intended appeal which shall be filed in this court within 21 days from the date of this ruling. I make no order as to costs.

Dated at Arusha this 30th day of August, 2018

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line and a vertical stroke, positioned above a dotted line.

S. M. MAGHIMBI

JUDGE