

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 67 OF 2017

(Originating from Kilombero District Court at Ifakara

Civil Case No. 10 of 2014)

ZENO NDULUAPPLICANT

VERSUS

BENJAMINI MFAUMERESPONDENT

RULING

E. J. MKASIMONGWA, J:

This is an application brought by ZENO NDULU for grant of an order extending time within which to appeal against the judgment of Kilombero District Court in Civil Case No. 10 of 2014 dated 22/12/2014. The Application is made by way of Chamber Summons filed under Section 14 of the Law of Limitation Act [Cap 89 R. E. 2002], Order XLII Rule 2 and Section 95 of the Civil Procedure Code [Cap. 33 R. E. 2002] and it is supported by the affidavit sworn by the applicant.

The Application is objected by the Respondent one BENJAMINI MFAUME. The later filed a Counter Affidavit. At the hearing of the Application, whereas the applicant was represented by Mr. Laurent Ntanga,

(Advocate) the Respondent was represented by Mr. Barnabas Nyalusi (Advocate)

In his submission Mr. Ntanga contended that he adopts all the contents of the affidavit filed in support of the Chamber Summons to be part of his submission; that the Applicant was a defendant in Civil Case No. 10 of 2014 of Kilombero District Court sitting at Ifakara. He is aggrieved by the decision given in the suit and he intends to appeal against it along with the decree issued. The Applicant could not timely lodge the appeal because he was not notified of the date of judgment as the same was not immediately read and the suit was adjourned several times for judgment. Sometime early in 2017 he became aware of the fact that the judgment was delivered on 22/12/2015 and it was when the Decree Holder was executing the decree. Although the Respondent was duty bound to notify the Applicant of the date of judgment he did not do so. Being a layman he Applicant deserves a lenient treatment so that he may appeal in which appeal there are overwhelming chances to succeed. He prays the Court that it grants the order sought.

On the other hand Mr. Nyalusi submitted that the reason advanced by the application as to why he could not file the appeal within the time prescribed by the law is that the Applicant was not aware of the judgment of the Court until when the matter was at the execution of the decree stage. He submitted that this is not a sufficient cause. As a reasonable litigant the Applicant ought to have made a follow up of his case. Going by Paragraph 4 of the Applicant's own affidavit, the Applicant was aware of the suit. The reason that the judgment was adjourned several times leaves

one to wonder if the counsel for the Applicant is aware of the history of the case. Even the time the Applicant decided to apply, that is three years betrays him. His action now is a result of an afterthought.

Mr. Nyalusi added that it is said that the Respondent was duty bound to inform the Applicant of the development of the case. He submitted that there is no law that imposes such duty on the Respondent (plaintiff). The Applicant had equal duty as the Respondent to make a follow up of the matter. Mr. Nyalusi referred that court to the decision of the court of Appeal of Tanzania in the case of **Tanga Cement Co. Ltd vs. Jumanne Masangwa and Another** cited in **Benedict Mummelo vs. Bank of Tanzania, Civil Appeal No. 12 of 2002** which provides for what amounts to a sufficient cause. The delay of over two years exhibits the fact that there was no due diligence on the part of the Applicant. As such this application is avoid of merit and it should be dismissed with costs.

In a short rejoinder Mr. Ntanga concluded that the Applicant is late in filing appeal by one year and a month. He did immediately file this application after noticing the judgment had been delivered. Therefore this application was promptly file. The Applicant visited the court three times making follow up. He has a sufficient cause therefore entitling him the order sought, and that the delay is attributed to this court and the Respondent. He reiterates the prayer to have the application granted.

That is all from the parties in this matter. The Court finds from the submissions that it is not disputed that the Applicant and the Respondent were the defendant and plaintiff, respectively, in Civil Case No. 10 of 2014

of Kilombero District Court at Ifakara. The Applicant lost the case in the judgment delivered by the Court on 22/12/2015. He is aggrieved by the decision hence intends to appeal to this court against the whole of it. Having been caught by the time limitation the Applicant has come to the court with the Application for extension of time in which to lodge an appeal. So that time is extended the court must be satisfied that the delay was due to sufficient as it was held and the case of **Benedict Mummelo vs. Bank of Tanzania, Civil Appeal No. 12 of 2002**, that:-

"It is write law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".

In the case of **Tanga Cement Company Limited vs. Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001**, the Court of Appeal of Tanzania stated briefly what can amount to sufficient cause. The court stated that:-

"What amounts to a sufficient cause has not been defined. From decided cases a number of factors has 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; lack of diligence on the part of the applicant"

In the instant case, the applicant contended that he was not aware of the judgment. This is because the judgment was not immediately delivered.

Delivery of the judgment was subjected to several adjournments. It is unfortunate that this assertion has not been supported by any documentary evidence such as the court proceedings. There is not even a mention of the date to which the judgment was set for delivery but the court failed to read it. Thirdly, it is my understanding that when the matter is adjourned before the court a date to which it is adjourned is fixed and the applicant does not alleged that the judgment was to be delivered on notice. Under such a situation he cannot successfully assert that it was necessary for him to be notified of the date of judgment as the judgment was set on the he was aware of or ought to have been aware.

With such findings, I find no sufficient reason/cause has been established why the application could not timely lodge the appeal. The Application is therefore dismissed with costs.

Dated at Dar es Salaam this 2nd day of January, 2018.




E. J. Mkasimongwa

JUDGE

2/1/2018