

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

**MISCELLANEOUS CIVIL APPLICATION NO. 186 OF 2017
(Originating from the decision of the Resident Magistrates of
Dar es Salaam at Kisutu in Civil Case No. 50 of 2013)**

**HEZRON KEHONGO
T/A KEA COMPUTER TRAINING CENTER.....APPLICANT**

Versus

**THE BOARD OF REGISTERED TRUSTEES OF
MWALIMU NYERERE FOUNDATION.....RESPONDENT**

RULING

B.R. MUTUNGI, J:

The applicant herein is seeking for extension of time to file his intended appeal out of time against the decision of the Resident Magistrates' Court of Dar es Salaam in Civil Case No. 50 of 2013 delivered on 19/10/2016. The application at hand is made in terms of a chamber summons under section 14 (1) and 19 (2) and (5) of the Law

of Limitation Act [Cap. 89 of 2002]. Further it is supported by an Affidavit sworn by the applicant.

As per his affidavit the applicant deponed that, on 3/11/2016 his advocate wrote a letter to the trial court indicating the applicant had an intention to appeal against the decision which was delivered on 19/10/2016. He further alleged that, on 16/2/2017 the applicant was supplied with the certified copies of the proceedings, judgment and decree. According to him, by the time he was supplied with appeal documents the appeal time had already expired. The applicant was of the settled view that, there are serious and contentious legal issues which need to be determined on appeal.

In the Counter Affidavit filed by the respondent dully sworn by one Michael Chale strongly opposed the application at hand. The respondent went further by deposing that the applicant took about two months from

the date the decision was delivered to apply to be supplied with the copies of judgment, proceedings and decree.

When the matter was scheduled for hearing, Mr. Emmanuel Marwa and Mr. Chacha learned Advocates appeared for the applicant and the respondent respectively.

Mr. Marwa in his brief submission had nothing much to say, apart from elaborating on what the applicant had deponed in the Affidavit. That is, by the time the applicant was supplied with the certified copies of judgment, proceedings and the decree the appeal time had already expired.

In reply, Mr. Chacha opposed the application and maintained the applicant took about 45 days to start processing his intended appeal from the date when the trial court had delivered its decision. Thus, this makes a total of

93 days by the time the instant application was filed herein. He further referred this court to the case of **Wambele Mtumwa Shahame Versus Mohamed Hamis, Civil Application No. 138 of 2016 (CAT-DSM) (UNREPORTED)** which emphasized that, each day of the delay should be accounted for by the applicant in support of the extension of time sought.

He further referred this court to the case of **Yusuf Jane and Another Versus Kadina Yusuf, Civil Appeal No. 11 of 2012 (Unreported)** in which its threshold expounded that, sufficient cause has to be given a wider interpretation. He concluded by submitting the applicant herein has failed to advance sufficient reasons to support the prayer sought.

In his rejoinder, Mr. Marwa submitted, the time limit to appeal against the decision of the trial court is 90 days, hence the applicant had failed to do so because he was late in being supplied with the copies of judgment,

proceedings and decree. He concluded the advanced reasons by the applicant are sufficient and prayed the same be granted.

The boiling point to be determined herein is whether the applicant has advanced sufficient reasons in support of the application at hand.

I have gone through the entire court record and submissions from the conflicting sides and find, it is not disputed that the intended decision to be challenged was delivered on 19/9/2016. Further the court record reveals that, on 3/11/2016 the applicant through the legal services of Maugo & Co. Advocates wrote a letter to the trial court requesting to be supplied with the certified copies of the judgment, proceedings and decree. Lastly, the applicant filed the application at hand on 21/4/2017.

From the above sequence of events, I agree with Mr. Chacha that, the applicant was inactive in processing his intended appeal. The reason being that, at first the applicant took about forty-five (45) days from the date when the decision of the trial court was delivered to the time he subsequently applied to be availed with the copies of the judgment, proceedings and decree. More so, upon being supplied with the same, even though the applicant did not disclose as to when the same occurred, he again took about five (5) months to file the instant application. All in all, the applicant in his corresponding Affidavit as well as the submission by his counsel, never accounted for the stated delayed days.

Most recently, in the case of **TANZANIA BUREAU OF STANDARDS VERSUS ANITHA KAVEVA MARO, CIVIL APPLICATION NO. 60/18 OF 2017 (CAT-DSM) (UNREPORTED)** at page 10 the Court of Appeal of Tanzania held;

'There was evidently a period of about forty days of inaction. I am mindful that it is the firmly entrenched position of this court that any applicant seeking extension of time is required to account for each day.'

In a similar vein, in the case of **VODACOM FOUNDATION VERSUS COMMISSIONER GENERAL (TRA), CIVIL APPLICATION NO. 107/ 20 OF 2017 (CAT-DSM) (UNREPORTED)** at pages 9 and 10 the Court of Appeal had this to say;

*'...Delay even **a single day, has to be accounted** for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken...**Those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence.**'*[Emphasis is mine]

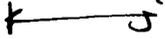
The above legal position has also been amplified in the case of **BUSHIRI HASSAN VERSUS LATIFA LUKIO MASHAYO CIVIL APPLICATION NO 3 OF 2007 (UNREPORTED).**

Consequently, I subscribe to the above stated legal positions since the applicant herein has failed to account for the earlier stated days.

For that reason, the applicant's inaction to process his intended appeal indicates, there was lack of diligence on his part. In the event, I find the applicant has failed to advance sufficient reasons in support of the application at hand.

All said, I hereby dismiss the application with no order to costs since as per the court record, Mr. Chacha did not pray for the same in the course of hearing.

It is ordered accordingly.

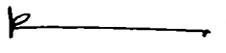

B.R. MUTUNGI

JUDGE

30/4/2018

Right of Appeal Explained.




B.R. MUTUNGI

JUDGE

30/4/2018

Read this day of 30/4/2018 in presence of Mr. Marwa for the applicant and Miss. Lilian Mdeme for the respondent.




B.R. MUTUNGI

JUDGE

30/4/2018