

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION 62 OF 2017**

*( Originating from Appeal No. 1/2017 Simanjiro District Court)*

**NDOORIAN KESINGERIA ..... APPLICANT**

**Versus**

**JONAI JOEL .....RESPONDENT**

**RULING**

The applicant intends to appeal against the decision of the District court of Simanjiro in Appeal No.1/2017. The decision was made on the 27/4/2017. She received a copy of judgment on the 26<sup>th</sup> May, 2017, after she had applied for the same on the 4<sup>th</sup> May, 2017. That was the date (26/5/2017) which was the last one for her to appeal within time. She could not afford to travel to Arusha to prepare an appeal in time. Again, it was not possible to prepare an appeal before having the document in hand. It would be difficult to point out errors or points of grievance without having the document in her hands. The counsel for the applicant also submitted that the applicant has difficulty in expressing herself in Swahili so she was unable to rely on oral account to prepare an appeal within time.

Upon reading a copy of judgments, the counsel submits that she finds that the District court magistrate erred in some legal points whereby she

believes her client would be relieved if the appeal will be allowed to be filed out of time. The court was thus referred to the case of **Samson Kishosha Gaba Vs Chalres Kingogo Gaba [1990] TLR 134** where the court stated that in determining whether or not to allow an application for leave to appeal out of time the court has to consider reasons for delay as well as the likelihood of success of the intended appeal”

The respondent in his reply to the submission by the applicant’s counsel submits that he could not see where the court erred as it fulfilled its duty. He however was called to collect a copy of judgment from the District court at Simanjiro after the appellant had done so. Upon showing a receipt of his collection, collected the copy of Judgment on 6<sup>th</sup> June, 2017. The applicant did collect on 26/5/2017. The respondent however, submitted that in his view, if this is only an application to extend time, there is no need to deny that so that the appellant may express her grievance.

This court, on perusal of the records and consideration of the submissions by the counsel for applicant find that indeed the date she collected the judgment was the last one to act within the prescription of section 25(1)(b) of the magistrate courts Act, Cap 11 R.E 2002. The date, 26/5/2017 was the 30<sup>th</sup> day counting from 27/4/2017. Given other reasons as submitted by the counsel of the appellant and the respondent’s reply, the court finds no reason to deny the application. Therefore, extension of time to file an appeal out of time is granted. The same should be filed within 14 days from today. Considering the outlook of the parties to the application this

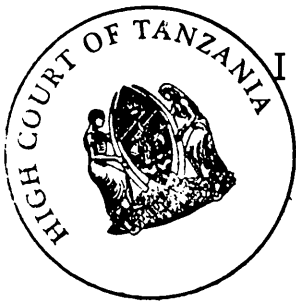
courts find, it fair not to grant for cost. So each of the parties will bear her/his costs.

It is ordered accordingly.

**SGD: T. MWENEMPAZI**

**JUDGE**

**4/9/2018**



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

A handwritten signature in black ink, appearing to read 'J.F. Nkwabi'.

**J.F. NKWABI**

**DEPUTY REGISTRAR**

**ARUSHA**

28/5/2018