

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 429 OF 2017**

**BETWEEN**

**JOHNSON MULIMA.....APPLICANT**

**AND**

**RUKIA MUSTAPHA.....RESPONDENT**

**RULING**

*Date of last Order: 27/9/2019*

*Date of Ruling: 22/10/2019*

**MLYAMBINA, J.**

Under ***Sections 14 (1) 19 (2) of the Law of Limitation Act, Cap 89 (R.E. 2002)***, the Applicant prayed before the Court to issue the following orders:

- a) The period between 11<sup>th</sup> April, 2017 when judgment was delivered in Civil Appeal No. 69 of 2015 at the Ilala District Court between the parties herein up to 17<sup>th</sup> July, 2017 when judgment and drawn order was supplied to the Applicant be excluded from the days computed for filing the appeal in this matter.
- b) Alternatively, time be extended for purposes of preferring the appeal on the part of the applicant against the decision which

was delivered by Hon. Msafiri RM on 11<sup>th</sup> April, 2017 in Civil Appeal No. 69 of 2015 at Ilala District Court.

c) Costs of this application to be provided for.

d) Any other order as the hon. court may deem fit to grant.

The application has been supported with an affidavit of the Applicant. The main reason featuring in the affidavit and written submission are to the effect that; *one*, the last part of the said judgment was read to the parties and not the whole composed judgment.

*Two*, after the delivering of that judgement, the applicant made follow ups on 9/05/2017, 26/05/2017 and 17/07/2017 as per the letters attached to the affidavit but nothing like judgment was supplied to them on those occasions.

*Three*, after being supplied with the said judgement on 17<sup>th</sup> July, 2017, the Applicant filed this application immediately on 25<sup>th</sup> July, 2017 in this court.

The respondent disputed the afore reasons through the counter affidavit sworn by Seni Malimi and through her written submissions in reply.

It was the respondent's submission that the Applicant started making follow ups on 9<sup>th</sup> May, 2017 which was after 10 days from

the date the judgment was delivered. In view of the respondent, the applicant has not accounted for the 10 days delay.

The respondent went on to reply that, since the applicant applied for the copy of the said judgment on 9<sup>th</sup> May, 2017 while the judgement was delivered on 11<sup>th</sup> April, 2017, it will be fatal to exclude the days between 11/04/2017 and 17/07/2017 in computing the days within which the Applicant ought to have appealed.

Further, the applicant has not accounted for the 8 days from the day he was availed with the copy of judgement, that is on 17<sup>th</sup> July, 2017 to the date of this application which is 25<sup>th</sup> July, 2017.

In support of the respondent's submission, the case of **Esio Nyomolelo and Another v. R**, Criminal Application No. 11 of 2015 CAT at Dar es Salaam (unreported) at page 3 was cited. In that case the court held:

*"The applicant is required to show and explain what prevented him from lodging his/her application within the prescribed time. In so doing, the applicant has to account for every day of delay caused by him in his affidavit."*

I have carefully considered the arguments of both sides. I noted that the Applicant applied for the copies of decision and proceedings before the expiry of 30 days appeal time. As such, the


applicant cannot be blamed that he acted recklessly or negligently in pursuing his appeal right.

The fact that the court delayed to issue him with the necessary copies of decision and proceedings, the blame shifts from the Applicant to the court itself. In the case of **Mary Kimaro v. Khalfani Mohamed** (1995) TLR 202, this court held that:

*"The appellant cannot in the circumstances be held to be responsible for the delay in obtaining copy of proceeding from the lower appellate court. It is the lower appellate court which has contributed to such delay"*

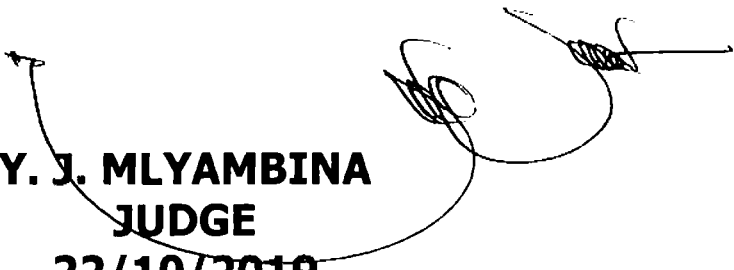
It is the findings of this court that the 8 days delay after obtaining the copy of decision, in the circumstance of this case, was not inordinate delay.

In the view of the foregoing, the application is granted as prayed. Costs shall follow events.



**Y. J. MLYAMBINA**  
**JUDGE**  
**22/10/2019**

Ruling delivered and dated this 22<sup>nd</sup> day of October, 2019 in the presence of the Applicant in person and counsel Zuri'el Kazungu for the Respondent.



**Y. J. MLYAMBINA**  
**JUDGE**  
**22/10/2019**