

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 464 OF 2018

*(Originating at Dar es Salaam Resident Magistrates Court at Kisutu Civil Case No. 233/2010,
High Court of Tanzania at Dar es Salaam Civil Appeal No. 25/2015 and Miscellaneous
Application No. 85/2018)*

BETWEEN

PARADISE HOLIDAY RESORT LIMITED.....APPLICANT

VERSUS

THEODORE N. LYIMO.....RESPONDENT

RULING

Date of Last Order: 27/09/2019

Date of Ruling: 17/10/2019

MLYAMBINA, J.

This is an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court delivered on 26th July, 2018 by Hon. Mutungi Judge in Misc. Civil Application No. 85 of 2018. The application has been made under **Section 5 (1) (c) of the Appellant Jurisdiction Act, Cap 141 (R.E 2002)** and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009.

The main reasons stated in the supporting affidavit sworn by Deogratias J. Lyimo Kiritta and in the submission in chief are that:

- 1. The Applicant was a Defendant in the Resident Magistrate Court at Kisutu Civil Case No. 233 of 2010, the Appellant in*

the High Court Civil Appeal No. 25/2015 and the Applicant in the Misc. Application No. 85/2018.

- 2. The High Court Appeal No. 25/2015 was dismissed on 11/12/2017 for want of prosecution.*
- 3. That, before dismissal of the appeal, the then trial Judge Hon. Ruhangisa was transferred and from 18/03/2016 to 04/07/2017 the court file was not re-assigned and there was no order issued by the court for mention or hearing of the appeal.*
- 4. That on 02/11/2017 the advocate for the Applicant wrote a letter to the court requesting to be notified and be served with notice of appearance and conduct of the appeal and the letter was accordingly received and acknowledge.*
- 5. That, according to the proceedings on 04/07/2017 the appeal court file was assigned to Hon. Mutungi Judge. And was set for mention /hearing on diver.*
- 6. That, there was no summons issued as ordered by the court and on 11/12/2017 the appeal was dismissed for want of prosecution.*
- 7. That, the Applicant became aware of the dismissal order on 19/02/2017 when he was served with summons to show*

cause which was issued by the Resident Magistrate Court at Kisutu.

8. That, the Applicant having been served with the summons for execution of the decree applied for leave to peruse the High Court of Appeal file on 20/02/2018 and understood the reason for the dismissed order and time to set aside the dismissal order and time to set aside the dismissal order having lapsed, the Applicant filed the application for extension of time to set aside the dismissal order on 20/02/2018.

9. That, the application was accordingly heard and ruling was delivered on 26/07/2018 dismissing the application on the ground that the Applicant was negligent to file the application to set aside the dismissal order within time and prosecute her appeal.

The Applicant has therefore moved the court to grant leave to appeal to the Court of Appeal against the decision of the High Court to dismiss the application, the grounds to suit that;

- i. Whether there were sufficient reasons for the Applicant failure to file the application to set aside the dismissal order of the appeal within time.*
- ii. Whether the Applicant was negligent in her failure to apply to set aside the dismissal order of the appeal within time.*

The Application has been contested by the Respondent. In their written submission, both parties have no issue with the position of law for the grant of leave to appeal to the Court of Appeal. Such conditions were stated in many cases including the case of **Rutagatina C. L. v. The Advocates Committee and Another, Civil Application** No. 98 of 2010 in which Msoffe J.A (As he then was) stated:

"An application for leave is usually granted when there is a good reason normally on point of law or on point of public importance that calls for the court of appeal intervention"


In this case, as responded, the Applicant has not advanced good reason or a point of law worth to be determined by the Court of Appeal.

If I may agree with the Applicant that the appeal court file was assigned to Hon. Mutungi J. on 04/07/2017 and that there was no summons issued as ordered only to find the appeal was dismissed for want of prosecution on 11/12/2017, one has to ask himself, where was the Applicant?

One cannot file a matter and stay docile for five months waiting for summons. The Applicant ought to have made follow up of its case.

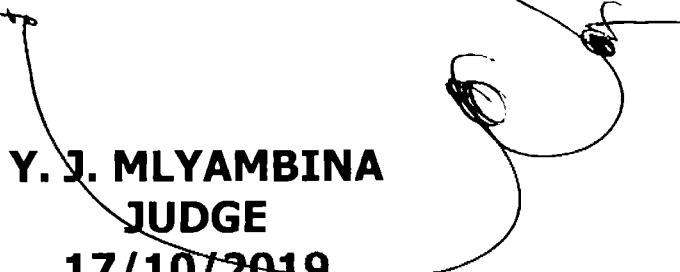
Again, if the appeal was dismissed on 11/12/2017, how could the Applicant come to know on 19/02/2017 about the dismissal? This leaves much to be desired. The only answer to it is that the Applicant is trying to wastage precious time of the court with hopeless application.

In the circumstances of the above the application is hereby marked dismissed with cost for lack of merits. It is so ordered.



Y. J. MLYAMBINA
JUDGE
17/10/2019

Ruling delivered and dated this 17th day of October, 2017 in the presence of Wijane Mrema Advocate for the Applicant and Mhidini Suleiman holding brief of Octavian Temu Advocate for the Respondent.



Y. J. MLYAMBINA
JUDGE
17/10/2019