

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 732 OF 2018

*(Arising from Matrimonial Case No. 35 of 2013, District Court of Ilala, Appeal No. 37 of 2018
delivered by High Court of Tanzania at Dar es Salaam District Registry)*

BETWEEN

THOBIAS KOMBA.....APPLICANT

VERSUS

MONICA B. MADEHA.....RESPONDENT

RULING

*Date of last Order: 17/07/2019
Date of Ruling: 08/10/2019*

MLYAMBINA, J.

The applicant lodged this application under **Section 14 (1) of the Law of Limitation Act Cap 89 (RE. 2002)** seeking for extension of time upon which the applicant to file his petition of appeal out of time. The application has been supported with the affidavit of Thobias B. Komba the applicant in this matter.

The main evidence or reasons to be gathered in the supporting affidavit is that the impugned decision was pronounced on 26th May, 2016.

The applicant herein requested to be supplied with the copy of judgment and drawn order through a letter dated 31st May, 2016 but the same was supplied to him on 14th August, 2016.

The applicant went on to testify that being a lay person and unrepresented in the Trial Court he was waiting to be supplied with a copy of Judgment to seek an assistance on preparing his appeal.

Thus, upon been supplied with a copy thereof, immediately he lodged the appeal on 6th September, 2016 hoping the appeal was within time. The same was struck out for being out of time of 45 days. The applicant was therefore of the view that the reasons for delay was not his fault.

The application has been resisted by the respondent. It was the respondent's contention that the applicant is abusing the court process as the copy of judgment was available within time. It is more than two years now ever since the decision was delivered. The applicant never took any effort to apply for extension of time till when the respondent applied for execution in the District Court.

In rejoinder, the applicant disputed the contention that he has been at home for two years. But he was in court litigation his Civil Appeal No. 37 of 2016 which was filed on 6th September, 2016 and struck out on 11th October, 2018.

The applicant went on to admit that he delayed to file this application for almost a month due to the reason that he had to seek assistance from legal professionals who could help to file the application.

I have considered both parties arguments and the reasons thereof. It is not in dispute that extension of time to appeal out of time needs to be supported with sufficient reasons. One of the major reasons as expounded by the court in various cases is accounting for each day of delay.

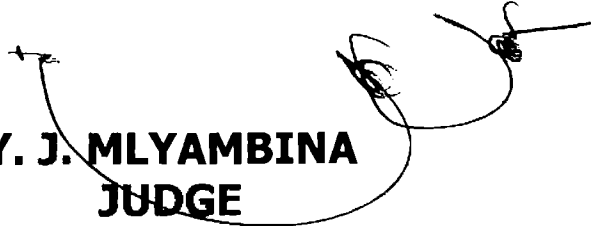
In the case of **Lyamuya Construction Co. Ltd V. Board of Registered Trustees of Young Women Christian Association Civil Application No. 2/2010** the court stated four guidelines which should be observed by court in granting extension of time, these are:

- a) The applicant must account for all the period of delay.
- b) The delay should not be inordinate.
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take and;

d) If the court feels that there are other sufficient reasons such as existence of the point of law sufficient importance such as the illegality of the decision sought to be challenged.


In the instant case, the applicant, though aggrieved by the decision of the District Court he delayed to lodge the appeal for the period of almost a month. There is no material given to account for the delay. The reason that the applicant as a lay person was looking for a lawyer to prepare the application is a far-fetched ground to be trusted because there are plenty of legal aid in Dar es Salaam City.

In the circumstances of the above, the application is dismissed with costs for lack of merits.



Y. J. MLYAMBINA
JUDGE
08/10/2019

Ruling delivered and dated this 8th day of October, 2019 in the presence of both parties in person.



Y. J. MLYAMBINA
JUDGE
08/10/2019