

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 117 OF 2019

(C/F Temeke District Court of Temeke Civil Case number 58 of 2014)

MCHUNGWA AMIRI MSEMOM.....APPLICANT

VERSUS

TATU IDD NG'AMBAM.....RESPONDENT

RULING

Date of last order 09/10/2019

Date of Ruling 21/10/2019

NGWALA, J.

This is an Application for extension of time within which to file an appeal out of time against the Judgment and Decree in civil Case No. 58 of 2014 of the Temeke District Court that was decided in favour of the Respondent on 4/7/2016.

The Application is supported by an affidavit sworn by the applicant accompanied by a copy of Intended petition of Appeal, a chit of prescription of Mtiro Medical Dispensary and three copies of bus tickets.

At the hearing of the prayer sought, Mr. Madibi the learned counsel for the applicant submitted that the applicant failed to appeal in time because he instituted other suits against the respondent, like Application. No. 40/2017 that was struck out on 12/11/2018 for lack of jurisdiction.

The counsel made a narration of incidents that hindered him to appeal in time. The incidents that includes attending a funeral of a close relative in Moshi and Arusha from 1/12/2018 to 22/12/2018. The fire accident that gutted his house, and on 18th February 2019 to 19/02/2019 when he was compelled to travel to Kilwa for burial of his tenant who had committed suicide. Thereafter the applicant travelled to back to Arusha to attend his sick brother till 03/03/2019 when he came back to Dar es Salaam were also mentioned. Those were argued as the good causes for the delay because they are factors beyond Human control.

Furthermore the counsel cited the provisions of sections 21 (1) and (2) of the Law of Limitation Act, when he asked the court to exclude the time used to get the copy of the proceeding in court. He also pleaded illegality, as held in the case of **Ezron Magessa Maryogo v. Kassim Mohamed Said & Ibrahim Mwankusye Civil Application No. 227 of 2015 (CAT)** to support that the

intended appeal raises serious issues of which patent illegalities and collusions ought to be adjudicated. According to counsel the intended appeal raise possible illegalities that constitutes good cause whether or not reasonable explanation has been given to account for the delay.

The Respondent vehemently resisted the Application on the grounds that, the Applicant is adamant in blocking the execution process and proceedings that had long started in District Court. She complained that the applicant is not ready to pay the decretal amount of Tanzania shillings 18,000,000/= as general damages awarded for injuries, pain and sufferings as a result of the Motor accident caused by the applicant in the year 2009.

The respondent stressed that the applicant who is insured by Niko Insurance Co. (T) Limited, went to the court and filed objections proceedings to raise the attachment order vide Civil Case No. 126/2017 that was dismissed and another case no 40/2017 that was for execution of the decree. The respondent prayed the court to dismiss this application on the ground that the applicant has caused injuries, sufferings, and poverty to her because of poor health condition resulted from that accident of the year 2009. The respondent insisted the present Application

has been filed to block the execution process of the decree in the trial court after the applicant had lost all his applications at the trial court.

In view of the foregoing submissions, I agree *in toto* with the respondent that this application is a delaying tactic. It is geared to thwart down the execution process in the trial court. Without further ado, I find this Application to have no merit whatsoever as there is no speck of truth in the submission by the counsel for the applicant. The Applicant is just playing a wild goose chase, which cannot be entertained by this court. For this reason this Application is dismissed with costs.

Having further considered the circumstances of this case, in the exercise of the inherent powers of the high court, in order to ensure that real and substantial justice is done, I therefore further order that the trial subordinate court should proceed with execution of its decree the subject of this Application forthwith.

Order accordingly.


A. F. Ngwala

JUDGE

21/10/2019

21/10/2019

Coram: Dr. A. F. Ngwala, J.

Applicant - Absent

Respondent - Present

B/C Miss Lulu Masasi

Court: Ruling delivered in court in the presence of the respondent and in the absence of the Applicant and his counsel.

Court: Right of Appeal to Court of Appeal of Tanzania explained.


A. F. Ngwala

JUDGE

21/10/2019