

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 604 OF 2018

(Arising from Probate Appeal No. 20 of 2017 at Kinondoni District Court originating from Administration Cause No. 1128/2016, at Manzese/Sinza Primary Court)

AZIZA IBRAHIM AHMED.....APPLICANT

VERSUS

HAMAD ABBAS.....RESPONDENT

RULING

Date of last order 15/10/2016

Date of Ruling 29/10/2019

NGWALA, J.

By way of Chamber Summons, made under section 14(1) of the Law of Limitation Act, (Cap 89 R: E 2002), the Applicant is seeking is extension of time to file an appeal in this court, against the Judgment of the District Court of Kinondoni. The application is supported by an Affidavit deposed by one Aziza Ibrahim Ahmed, the Applicant.

~~Both parties were represented. Mr. Francis Munuo learned~~
Advocate represented the Applicant, while Mr. James Ndetyabura represented the respondent.

It was agreed by both parties the matter be argued by way of written submissions.

It was submitted by the applicant that, the delay to be supplied with the copies of judgment caused the Applicant to fail to lodge an appeal within the prescribed time. There was no negligence on the part of the Applicant but that delay was occasioned by the court. In support of this argument the case of **Tanzania Sewing Machine Company Limited v.Njake Enterprises Limited Civil Application No. 56 of 2007**, was cited.

The counsel urged the court to exercise its discretion to grant the leave to appeal out of time as held in the cases of **Mumello v. Bank of Tanzania [2006] TLR 227** as well as **Kalunga and Company Advocates v. National Bank of Commerce [2006] TLR 235**.

In order to establish a good cause for the delay and account for each day of delay, the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Limited, Civil Application No.10 of 2010**, was cited, that establishes the factors necessary to be considered in granting leave. The counsel for the applicant stressed that, when the judgment was delivered on 15th August, 2018 by the District Court, the copies were not granted promptly;

instead the applicant obtained them on 17th September, 2018. It was neither the Applicant's negligence nor the fault on the part of his Advocate.

Mr. James Ndyetabura, learned advocate for the respondent resisted the application supported by the Counter Affidavit deponed by one Hamad Abbasi. The Counsel urged the court to dismiss the application for being time barred due to the negligence on the part of the applicant as held in the case of **Dar es Salaam City Council v. Group Security Company Limited, Civil Application No. 234 of 2015** Court of Appeal of Tanzania (unreported) by his lordship Kaijage J.A at page 7, that,

"As a matter of general principle, it is always in the discretion of this court to grant extension of time under Rule 10 of the Rules. But the stance which this court has consistently taken is that, in an application for extension of time the applicant has to account for every day of the delay".

Thus, the court was asked to dismiss the application with costs, because of absence of material basis to support the delay and inability to account for each day of delay.

I have considered the rival submissions by both counsels in this application. The issue is whether there are sufficient causes for enlarging the period of appeal in this application.

The applicant has argued the delay was not on their fault as they were delayed to be supplied with copies of the judgment. The applicant stresses this reason as a sufficient ground to be granted leave of this court to lodge an appeal. But the respondent insisted the applicant could not furnish sufficient reasons for the delay. The respondent regards the applicant as negligent in pursuing her right of appeal. For him, there are no sufficient reasons to warrant this court to allow this application.

The court of Appeal of Tanzania, in the case of **Tanzania sewing Machines Company Limited** (supra), at page 7 held that;

"Under the circumstances, I find that the trial court's omission to issue a properly signed decree to the applicant, occasioned the delay in reinsituting the notice of appeal. This is in my considered view, sufficient ground for extending the period of appeal".

Also, in the case of **Kalunga and Company Advocates** (supra), *it was held that,*

"...the court has a wide discretion to extend time where the time has already expired, but where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material upon which the court may exercise the discretion given..."

In the light of the above cited authorities, I agree with the counsel for the applicant that the delay was not caused by negligence on part of the applicant.

Under the circumstances, I find the trial court's omission to supply the copies of judgment to the applicant within time as a sufficient reason that led the applicant's delay. Thus, she is entitled to be granted enlargement of time. This, in my considered view, is sufficient ground for extending the period of appeal. I therefore, accordingly grant extension of time to file an appeal. The appeal to be filed within twenty one (21) days from the date of this order.

Application allowed with costs.



A. F. Ngwala

JUDGE

29/10/2019

29/10/2019

Coram: A. F. Ngwala, J.

Applicant - Present

For Applicant - Mr. Malamsha (Advocate)

Respondent - Present

For Respondent - Mr. Ndyetabura (Advocate)

CC: Miss Lulu Masasi

Court: Ruling delivered in the presence of the parties and their respective advocate.

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



A. F. Ngwala

JUDGE

29/10/2019