

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CIVIL APPEAL No. 182 OF 2018**

(Originated from Probate Cause No. 430 from Temeke Primary Court)

**MWENDA MAKUSI FUNDOGOLO.....APPELLANT**

Versus

**KIDAWA IDD.....RESPONDENT**

**RULING**

5<sup>th</sup> December, - 19<sup>th</sup> December, 2019.

**J. A. DE-MELLO J;**

It is Extension of Time to file Rejoinder to Respondent's reply to the Appellant Petition of Appeal in respect of the Civil Appeal No. 182 of 2019, that the Applicant moves this Court orally and without leave whereas the Respondent has responded accordingly.

When the application came for hearing on 5<sup>th</sup> December 2019, following parties prayer to argue the same by way of written submissions and both have complied.

The Applicant attributes failure to meet the time line owing to his unrepresented status, lay by background and met with hiccup in retrieving receipt evidencing payment due network failure taking into account e-filing system currently operating in the Judiciary.

Counsel for the Respondent opposes the reason advanced being not good enough for consideration by Court considering that, the Applicant alleges to have filed on **22<sup>nd</sup> November, 2019** but, even admitting to have done it on **4<sup>th</sup> December, 2019** issued with receipt on **5<sup>th</sup> December, 2019**, facts which are unclear as to which is the correct position. It is trite law that **Extension of Time is purely, Court's discretion judiciously exercised**, reasons not sufficient for the delay renders the Application incompetent. Failure to comply with Court orders equals to non-appearance for want of prosecution, as he prayed for dismissal of the Appeal.

I have considered the submission by both parties and, with due respect to the Respondent, the remedy suggested for dismissing the Appeal is misconceived considering it was a mere rejoinder which if any responds to a reply of the Appeal already filed. In absence of proof for the network failure and or even Affidavit from Court Clerk for the same, the reason seems speculative and rather lame. The presence of submission by the Appellant and Respondent in absence of Rejoinder does no harm in terms of determination of the Appeal. The Application has no merit as I dismiss it but deciding the Appeal based on the submission already on record.

It is so ordered.

**J. A. DE-MELLO**

**JUDGE**

**19<sup>th</sup> December, 2019.**