

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 48 OF 2019

SHOMARI KALAMBA ----- APPLICANT

VERSUS

ALLY MBWAMBO ----- RESPONDENT

RULING

Date of last order: 19.12.2019

Date of Ruling: 31.12.2019

Ebrahim, J.:

The applicant herein has filed the present application praying for the order of this court to extend time to file an appeal against the judgement and decree of the District Court of Ilala at Samora Avenue dated 06.03.2018 vide Miscellaneous Civil Case No. 159 of 2016. The application is supported by

an affidavit of Shomari Kalamba, the applicant. The application has been preferred under **Section 14(1) of the Law of Limitation Act, Cap 89, RE 2002; and Order XXI Rule 24(1) of the Civil Procedure Code, Cap 33 RE 2002.**

I wish to point out at the outset that the applicant has made an omnibus application applying for extension of time and stay of execution. However, I would ignore the application for execution and proceed to determine the prayers for extension of time.

In this matter both parties appeared in person, unrepresented. On 30.10.2019, the applicant prayed for the application to be disposed of by way of written submission. The court heeded to his request and set a schedule thereof. The court again set a mention date with a view of ascertaining as to whether the submissions have been filed as ordered. However when parties appeared on 19.12.2019, they had not filed their respective submissions and they both adopted their affidavit and counter-affidavit respectively and urged the court to consider the same.

Going through the affidavit particularly paragraphs 2,3,4,5,6 and 7, the applicant has narrated the facts pertaining to the delay in filing his appeal. He averred that after the decision of the District Court, he filed notice of appeal and on the same date of judgement i.e. 06.03.2018 he wrote a letter requesting to be availed with a copy of judgement and proceedings so that he can pursue his appeal **(annexures 1 and 2)**. However he was not availed with the same until 25th June 2018 when he wrote a complaint letter to the Deputy Registrar **(annexure 4)**.

In his counter affidavit the respondent mainly pointed out the difference in dates and disputed the application by the applicant.

Indeed extension of time is granted by the Court upon exercising its judicial discretion on establishment of sufficient cause which prompted the delay by the applicant. The principle has been elaborated in the case of **Mumello Vs Bank of Tanzania** [2006] 1 EA 227 where it was held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".

The Court of Appeal, in the case of **Aluminium Africa Ltd V Adil Abdallah Dhyebi and others**, Application No. 6 of 1990 (Unreported) expounded further on what amount to sufficient reason by holding that the applicant must show that the delay was **not out of negligence, disinterest or lack of diligence** and **has to account for each day of the delay**.

As intimated earlier, the applicant immediately after the decision of the lower court indicated his interest to appeal only to be availed with the judgement and proceedings late after making several follow ups. I have perused through the file and find a letter by the applicant requesting for a copy of judgement and proceedings as well as a letter of complaint

registering his dismay for the delay in obtaining such documents. I would therefore say with certainty that the delay was not occasioned by **negligence, disinterest or lack of diligence** by the applicant.

That being said, I allow the application and the applicant is availed thirty (30) days from the date of this ruling to file the appeal. Costs shall abide to the outcome of the intended appeal.

Accordingly ordered

A handwritten signature in black ink, appearing to read 'R.A. Ebrahim', with a stylized, cursive script.

R.A. Ebrahim

Judge

Dar Es Salaam

31.12.2019