

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISCELLANEOUS CIVIL APPLICATION NO. 18 OF 2016**

**JOHN S/O CHAGU ..... APPLICANT**

**Versus**

**SITA FRANCIS MANINGU ..... RESPONDENT**

*Date of last order: 21/11/2018*

*Date of Ruling: 31/01/2019.*

**RULING**

**KIBELLA, J.**

The applicant, JOHN CHAGU, instituted this application under section 14 (1) of the Law of Limitation Act, (Cap 89 RE 2002), section 93 and 95 of the Civil Procedure Code, [Cap 33 RE 2002] and any other enabling provisions of the law, against SITA FRANCIS MANINGU, herein after referred to as the Respondent, for the following orders:-

- (i) That this Honourable court be pleased to grant an order for extension of time to file an appeal out of time.
- (ii) Any other reliefs that this Honourable court may deem fit and just to grant.

The application has been made by way of Chamber summons supported by an affidavit deposed by the applicant himself. Under paragraph 3, 4, 5 and 6 of the affidavit the applicant stated:-

3. That the Respondent herein being aggrieved with the decision of the Mwandoya Primary court he decided to appeal to the District court of Meatu whereby the appeal ended in his favour.
4. That, again being aggrieved with the decision of Meatu District court I decided to Appeal to High Court of Tanzania at Tabora Registry whereby the Appeal was filed out of time. A copy of the High court proceedings is annexed and marked JC – 1 to form part of this affidavit.
5. That, the applicant was intending to appeal in time but he could not be supplied with the copies of judgment and Decree until 4<sup>th</sup> April, 2015. A copy of the said Judgment is annexed and marked JC – 2 to form part of this affidavit.
6. That the Applicant's intended appeal to this Honourable court has overwhelming chances of success as the District court disregard (sic) the requirement of customary law which resulted to the unfair decision which can only be rectified by this Honourable court so as to ensure that justice is not miscarried.

When the application was served to the Respondent under the services of Mr. Paul Kaunda, learned counsel, filed counter affidavit deposed by the Respondent himself and at paragraphs 2, 3, 4, 5 and 6 stated as follows:-

2. That the contents of paragraph 1 of the affidavit are noted. That surprisingly and unbelievably on 26/3/2015 was summoned to appear before the Nyalikungu primary court to hear the respondent for taxation of cost filed by John Chagu as if the judgment was in his

favour and ordered me to pay costs the fact that was not true. Copy of the letter is attached and forming part as an exhibit "A"

3. That the contents of paragraph 1, 2, and 3 of the affidavit are noted save that there was no irregularities in said application. That judgment of the District court was delivered on 23<sup>rd</sup> March, 2015 and the appeal filed on 14<sup>th</sup> May, 2015 which was about "40" day letter (sic), such appeal are pursuant to section 38 (1) of the Civil Procedure Act, 2002 to be filed within 30 days. What is worse, went on, no application for leave to file the appeal out of time was filed.
4. That the contents of paragraph 4 of the affidavit are not (sic). That this judgment was delivered on 23<sup>rd</sup> March, 2015 and no intention to appeal from the applicant please we want the application to be dismissed with costs because all problem is from the applicant to make him to get out time. And that this trial court of Meatu to the certified of the judgment on 04<sup>th</sup> April, 2015 it is not time barred but the applicant he is laying the court.
5. That the contents of paragraph 5 of the affidavit are denied and the applicant needs to prove strongly thereof since the judgment was given in the appropriate time and if he delayed to get the copy of it the law is clear on that issue.

At the hearing of the application the applicant appeared in person and unrepresented. However, he had nothing to add to what is contained in his affidavit in support of chamber summons to his application. Thus left the same to the wisdom of the court to consider them and reach a just decision on his side.

The Respondent enjoyed the services of Mr. Paul Kaunda, learned counsel.

In response to the above, Mr. Paul Kaunda argued that the stand of the law and the court of record is that, any person seeking for extension of time to file appeal according to this case, must give reasons which will be reasonable one for every day he delayed.

He went on that, on the record the applicant was not satisfied by the decision of Meatu District court in Matrimonial Appeal No. 3 of 2015, delivered by Hon. Mabula, RM (as he then was) on 23/3/2015. He appealed to the High court of Tanzania at Tabora Registry where the appeal was registered as (PC) Civil Appeal No 28/2016. The applicant was represented according to his annexures to his affidavit by Stella Nyaki, Advocate, who decided to withdraw that appeal before his lordship Mrango, J, as observed to be time barred.

Thus the High court granted his prayer to withdraw his appeal.

Mr. Paul Kaunda, further argued that, the Law of Limitation Act, [Cap 89 RE 2002] gives 90 days for one to appeal for an aggrieved person from the decision of the District in Civil case. Therefore, the applicant was supposed to file his appeal on 4/7/2015 where 90 days reached its end.

Otherwise could have to file an application and account for each and every day of delay. To bolster up his contention cited the case of TANZANIA RENT CAR LIMITED .V. PETER KIMUHU, CIVIL APPLICATION NO. 226 OF 2017, COURT OF APPEAL OF TANZANIA AT DAR –ES-SALAAM (unreported) at pages 14 – 15 his lordship Lila, JA, stated:-

*"Delay even a single day has to be accounted for, otherwise there would be not point of*

*having rules prescribing periods within which certain stages have to be taken."*

Furthermore, stated that, since the applicant has failed to account for each and every day delayed. And that even in his affidavit nothing was said upon such delay. Thus prayed that the same application be considered as devoid of merits and the same be dismissed with costs.

In his rejoinder, the applicant conceded that he delayed but such delay was due to the learned trial Magistrate who was bereaved, this led the applicant getting a copy of judgment while time to appeal had lapsed. However reiterated his prior prayer that he left for this court to use its wisdom in considering and deciding in order to reach the ends of justice.

Having gone through the affidavit by the applicant and the counter affidavit by the Respondent, the submissions in support and rival thereto, the central issue for determination is whether the applicant's application has merits.

To start with answering the above issue, the guidelines for the grant of an application for extension of time was clearly put in the case of LYAMUYA CONSTRUCTION COMPANY LTD. V. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO 2 OF 2010 COURT OF APPEAL OF TANZANIA (unreported) where the court stated:-

*"(a) The applicant must accord for all period of delay.*

*(b) The delay should not be inordinate.*

*(c) The applicant must show diligence and not aptly negligence or sloppiness in the prosecution*

*of the action that he intends to take.*

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

The above guidelines were as well observed in the case of TANZANIA RENT CAR LIMITED V. PETER KIMUHU, CIVIL APPLICATION NO. 226 OF 2017 COURT OF APPEAL OF TANZANIA AT DAR-ES-SALAAM (unreported).


Reverting to our instant application, having carefully gone through the applicant's affidavit, certainly, first of all never mentioned as to when he first filed his appeal before the High Court of Tanzania at Tabora while out of time. The reason raised that he delayed in obtaining a copy of the judgment of the 1<sup>st</sup> appellate court, (Meatu District court), this has nothing to do with this present application, as rightly argued by Mr. Paul Kaunda, learned counsel for the Respondent that, the judgment of the District court was delivered on 23/3/2015 and the same was certified on 4/4/2015, when it was ready for collection. From that date up to 2016 as his appeal was numbered PC Civil Appeal No. 28 of 2016 and which was withdrawn upon the applicant's learned counsel's prayer on the reason that the same application was time barred, that was on 28/6/2016. Therefore this application being filed on 3<sup>rd</sup> October, 2016, plus the prior delay which caused the prior appeal before the High Court of Tanzania at Tabora to be marked withdrawn and that for this application for leave to appeal out of time, certainly I find that there is nothing which was accorded for all period of delay by the applicant, certainly the delay was inordinate, and it showed that, the applicant failed to show diligence except was of

negligence or sloppiness in nature in the prosecution of action that he intends to take.

However, from what I gathered through the applicant's affidavit, there is no other reason such as whether there had been an existence of a point of law sufficient importance, such as the illegality of the decision sought to be challenged.

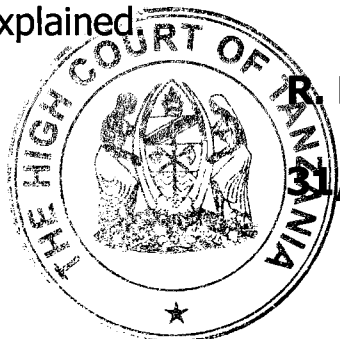

Upon the point of illegality it is trite law that the same should be on the face of the record and not otherwise. There is nothing of that nature on the face of the record. For the foregoing reasons and what I have endeavored to state, I find that the application is devoid of merits and the same is hereby dismissed with no costs for maintaining harmony of the parties.

Order accordingly.

  
**R. M. Kibella**  
**JUDGE**  
**3/01/2019**

**Order:** Ruling delivered in chambers this 31<sup>st</sup> day of January, 2019 in the presence of the applicant in person and in the present of the Respondent in person but in the absence of his learned counsel, Mr. Paul Kaunda.

R/A fully explained

  
  
**R. M. Kibella**  
**JUDGE**  
**31/01/2019**