

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

MISC. CIVIL APPLICATION NO. 157 OF 2019

ROSEMARY KATO MUSHUMBA.....1ST APPLICANT

GOLDEN TRAINING INSTITUTE.....2ND APPLICANT

VERSUS

MUHIDINI MUSTAFA HASSANI.....1ST RESPONDENT

ABDUL KASSIM MATIKO.....2ND RESPONDENT

(Origin: Civil Case No. 32 of 2017 Temeke District Court)

RULING

Date of Last Order: 29/10/2019

Date of Ruling: 19/12/2019

S.M. KULITA, J.

This application has been brought by the applicants under Section 14(1) of the Law of Limitation Act, (Cap 89 R.E 2002) seeking this Court to issue an order extending time for them to file their appeal against the decision of Temeke District Court in the Civil Case No. 32 of 2017. The application has been supported by the

affidavits of Mr. George Kato Mushumba, Advocate for the Applicants and that of Rosemary Kato Mushumba, the first applicants.

Mr. George Kato Mushumba (Advocate) appeared for the applicants while the respondents appeared in person.

The reason for the delay as stated in their affidavits in support of the application is that it was occasioned by the trial Court's failure to extract a decree in time which is a prerequisite condition in lodging an appeal, that it must be accompanied with the copies of the judgment and decree.

The parties agreed to dispose this application by way of written submission. It is the submission by the learned counsel for the applicants that under Order XXXIX Rule 1(1) of the Civil Procedure Code [Cap 33 R.E 2002] appeal to the High Court must be accompanied by the copies of the judgment and decree being appealed from. The Court may dispense with the requirement of the copy of the judgment but not a decree.

The applicant's counsel submitted that after the delivery of the judgment, the applicants wrote to a letter to the District Court praying to be supplied with the copies of the judgment, decree and proceedings for appeal purposes. The applicants were

supplied with the copy of the judgment in the mid of February, 2019 and the copy of a decree was not supplied until 18/3/2019 the date it was extracted. The first schedule at Part II item 1 of the Law of Limitation Act provides that "an appeal under the Civil Procedure Code, 1966 where the period of limitation is not otherwise provided for by the any written law is ninety days". He said that in this matter ninety days lapsed on 18/3/2019 the day when the decree was extracted. It was not possible to file an appeal on the very day of its extraction. As a matter of practice of this Court, documents must undergo admission before the Registrar prior of being filed. The admission before the Registrar was approved on 26/3/2019 and on the very date an application for extension of time to appeal was lodged. It took three days to prepare chamber summons, two affidavits and the intended memorandum of appeal. So each and every day of the delay has been explained. The time taken to file this application was very reasonable under any circumstances. So it is the learned counsel's prayer that the prayers in chamber summons be granted.

The Respondents prayed for the dismissal order by submitting that there are no sufficient reasons by the applicants for the delay to appeal because the judgment of this case was pronounced on

18/12/2018 in the presence of both parties. The applicants applied to be supplied with copy of judgment and decree on 23rd January, 2019 which was 35 clear days from the date of judgment. So the delay was not out of their control but they contributed to the delay had they applied for a copy of judgment and decree in time they could have been supplied in time and they could have appealed in time.

The Respondents further submitted that granting extension of time is the discretion of the Court. However, there are factors that the court need to consider before granting for extension as it was started in the case of **TANZANIA REVENUE AUTHORITY VS. TANGO TRANSPORT CO. LTD AND TANGO TRANSPORT ACO. LTD VS. TANZANIA REVENUE AUTHORITY, CONSOLIDATED CIVIL APPLICATION NO. 4 OF 2009 AND NO. 9 OF 2008, CAT (unreported)** which are the length of the delay, the reasons of the delay, whether there is arguable case such as whether there is point of law on the legality or otherwise of the decision sought to be challenged and the degree of prejudice to the defendant if the application is granted.

Also it is the submission by the respondents that the applicants filed their application on 26th March, 2019, eight days from the

last date they were supposed to file their appeal if they wish. The applicants were supposed to account for every day they delayed.

In rejoinder, counsel for the applicants submitted that there is no provision in the Civil Procedure Code [Cap 33 R.E 2002] which stipulates the time to apply for judgment and decree. The applicants delayed for nine days from the date they obtained the decree which is on 18/3/2019 because on 19/3/2019 and 20/3/2019 were used for reading, preparation of this application, two affidavits and the intended memorandum of appeal. The application was submitted on 21/3/2019 for admission. It followed one working day Friday, 23/3/2019 and Saturday and Sunday. The application was admitted on 26/3/2019 Tuesday and filed on the very day. Each and every day of delay has been fully explained.

In the light of the above submission from both sides, the issue is whether there is/are sufficient reason(s) for delay to warrant the grant of orders being sought.

In the case of **BENEDICT SAUL MWALUBUNJU VS. ACCESS BANK TANZANIA LIMITED, MISC. CIVIL APPLICATION NO. 733 OF 2018, HIGH COURT AT DSM (unreported)** the applicant was supplied with necessary copies on 9th November,

2018. The deadline for filing his application for leave was on 12th November, 2018. The time was so limited as a result he filed this application on 19th November, 2018. The Court stated that the delay is tolerable, the applicant was diligent in pursuing his appeal right. The application was granted.

To the case at hand the applicants were supplied with a copy of the decree on 18/3/2019 and the 90 days for appeal expired on the same date. They filed their application on 26/3/2019 eight days after the date they obtained the decree. The learned counsel for the applicants submitted that those eight days were used for reading, the preparation of the necessary documents and for filing this application. In the light of the decision in **Benedict Saul Mwalubunju's case (supra)** mentioned above this Court finds that the applicants have advanced sufficient reason for the delay, the delay is tolerable and so the application is granted. No order as to costs.



S.M. KULITA

JUDGE

19/12/2019