

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 309 OF 2019

FURAHA MSAKI APPLICANT

VRS

JOYCE H. TESHA RESPONDENT

Date of last Order: 05/09/2019

Date of Ruling: 18/10/2019

R U L I N G

MGONYA, J.

The Applicant filed an Application for extension of time to file Leave to Appeal to the Court of Appeal out of time against the decision of this Court delivered on 24/10/2010 in **Civil Appeal No. 104 of 2013**. The Application was filed under **Section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 [R.E. 2002]**. The Application before this Court is in support of an Affidavit of one Furaha Msaki, the Applicant herein.

In support of the Application the Applicant under paragraph 3 of his Affidavit states the reason for his delay, and therefore

prayed for the Court to grant the prayers sought in the Chamber summons.

The Respondent in her submission averred that the Applicant must advance sufficient cause, and failure to do so the Court has no option but to reject the Application. The main causes stated by the Applicant are due to his sick brother and the confusion he states in the decrees he refers to.

In the Rejoinder, the Applicant prayed that this Court to adopt his Affidavit in support of the Chamber summons, his written submission and rejoinder all be made part of his Application.

Having considered the submission of both parties in support of the Application for extension of time to apply for leave to appeal to the Court of Appeal, the main issue at this juncture is whether the Applicant has established ***sufficient or good cause*** for the delay so as the Court may exercise its discretionary powers in granting the Application.

It is trite law that this Court may for any reasonable or sufficient cause, extend the period prescribed in law for application of extension of time. It is crystal clear in law that sufficient reason is a pre condition for the court to grant extension of time. This is the position in case of ***ENTERPRISES***

LTD VS. EAST AFRICAN DEVELOPMENT BANK, Misc. Application No. 135 of 1995 where Katiti, J. (as he then was) held that:

"It is the law that extension of time must be for sufficient cause and cannot be claimed as of right, that the power to grant this concession is discretionary which is to be exercised judiciary. Upon sufficient cause being shown, this has to be objectively assessed by the Court".

The Applicant in his submission under paragraph 3 to 6 of the written submission argued that his reasons for delay at large rest upon the two Decrees that have same dates while being extracted at two different occasions and the first Decree not being similar to the second Decree and yet both contain the same date, hence brought confusion and he found himself out of time to lodge and appeal as he did not know as to which Decree he ought to have relied on.

In light of what has transpired in records; I am settled in mind that the reasons adduced by the Applicant in his Affidavit and submission are sufficient for the Decrees as appearing in record are two different, one bears 4 orders and the other Decree bears 5 orders. In the face of records, a Decree is a document

created by the Court and therefore the Applicant had no control over it. However, the Applicant further in the submission submitted to have attended a sick brother in Kilimanjaro whereas the patient passed away and after the funeral and making follow up he became aware to have been time barred.

The Applicant states to have been the Appellant in **Appeal No. 104 of 2003** in the High Court of Tanzania whereby on 24/10/2014 judgment was delivered upon the appeal and decree was passed. That sometime in 2016, the Respondent filed an application for execution. When the execution was in motion the Respondent appeared with another decree containing 5 orders but bearing the same date as the first decree. It is from that decree the Applicant was aggrieved but was time barred already, and filed an application to the Court of Appeal seeking extension of time; to file a notice of appeal which was granted on 24/05/2019 and an order to file the same within 30 days.

It is from that position that the Applicant has this Application before this Court seeking extension of time to file leave to appeal to Court of Appeal.

It is my opinion that the reasons advanced by the Applicant are both beyond his control; it is requirement of law for one to seek leave to appeal to Court of Appeal. I find it in the record that

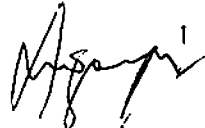
there were litigations in Courts that were on going all in the desire of the Applicant seeking justice and that the Applicant was not just reluctant to have caused the delay.

In the event therefore, I don't hesitate to conclude that the Applicant has shown sufficient cause to warrant the exercise of this Courts discretional powers to grant the prayers sought.

From the reasons above, the Application is found to have merit. **It is hereby granted accordingly.**

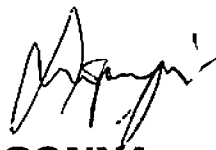
I make no orders as to costs.

It is so ordered.



L.E. MGONYA
JUDGE
18/10/2019

Ruling delivered in chambers in the presence of the Appellant and Ms. Emma RMA, this 18th day of October, 2019.



L.E. MGONYA
JUDGE
18/10/2019