

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

MISC. CIVIL APPLICATION NO. 661 OF 2018

USTAADH HASSAN SULEMAN IDRISA..... APPLICANT

VERSUS

SHUKURU SAID LINJEPE.....1ST RESPONDENT

KASSIM UNGELE.....2ND RESPONDENT

SAIDI BADRU.....3RD RESPONDENT

KASSIMU ABDALAH.....4TH RESPONDENT

KAIMU NGUDA.....5TH RESPONDENT

JAIRANI MKUPASHI.....6TH RESPONDENT

FADHILY NG'AMBA.....7TH RESPONDENT

OMARI ABDI.....8TH RESPONDENT

MOHAMED ALLY..... 9TH RESPONDENT

AMINA R. SWAI.....10TH RESPONDENT

Date of last Order: 26/09/2019

Date of Ruling: 25/10/2019

R U L I N G

MGONYA, J.

This Application is made under **Section 14 (1) of the Law of Limitation Act Cap. 89 [R.E.2002]**. The Applicants application is supported by an affidavit sworn by the Applicants' Counsel **JALLY MONGO** Advocate. The Applicant seeks for the following orders:

- a) That , the period of time within which an Appeal against the decision of the Resident Magistrates' Court Dar es Salaam at Kinondoni in Civil Case No. 26 of 2014 dated 18TH September 2017 before Hon. J Mushi, RM can be extended by this Honorable Court on the grounds as detailed in the Affidavit attached and accompanying the Chamber Summons.**
- b) Any other order (s) this Honorable Court may deem fit to grant.**

The Applicant in this Application as appeared above was represented by **JALLY MONGO** learned Advocate while **YAHYA NJAMA** learned Advocate represented the Respondents.

On the **26/09/2019** I ordered the Application be disposed of by way of written submissions; whereas a schedule for the same was arranged.

I feel it is important at this juncture, to refer to paragraphs 3 to 12 of the Affidavit in support of the Application. The paragraphs narrate the entire reasoning as to why and what happened to the Applicant for him to pray the Court grant him extension of time to file an appeal to this Honorable Court.

On the Contrary, the Respondents herein went further denying the averments of paragraph 11 and 15 to the extent alleging that the Applicant has no good cause for appeal. The Applicant applied for copies of Judgment and proceeding which were furnished to him and timely lodged them for an appeal before the Court of Appeal.

As it is under **Section 14(1) of the Law of Limitation Act Cap. 89 [R.E. 2002]**, an application for extension of time is entirely rested on the discretion of the Court to grant or refuse the same. It is well known that the discretion ought to be exercised judiciously upon giving sufficient cause.

In the case of ***BENEDICT MUMELLO VS. BANK OF TANZANIA, CIVIL APPEAL NO. 12 OF 2012*** the court held that inter alia;

"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".

It is to be cautious upon reasoning whether the Applicant in the Application and submission has adduced before the Court what amounts to sufficient cause to be granted what he prays for in the Application.

According to the Applicant, sufficient reasons for delay mainly fall under the reason that after being aggrieved by the decision of Kinindoni District Court, he lodged an appeal timely before the High Court. It was then at the day of hearing before Hon. Ngwala J. that the Memorandum of appeal was improperly drafted and hence struck out.

In considering this Application, Advocate for the Applicant urges this court to take note of what actually caused the order for

striking out the appeal. And that the delay at this instance was technical rather than actual, for not being properly drafted. The Applicant still has interest to pursue the appeal which in principle was already before the Court but faced a technical ground for being struck out. In the case of **FORTUNATA MASHA VS WILLIAM SHIJA & ANOTHER [1997] TZCA 14; (21 MAY 1997) TLR 154**, it was held that:

"....a distinction hard to be drawn between case involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal has to be instituted.

In the present case, the Appellant had acted immediately after the pronouncement of the ruling of the court "striking out" the first appeal. In these circumstances an extension of time ought to be granted..."

Upon determination of this application am aware of the need of sufficient ground for delay to be established, and that included:

- a) Bringing the application promptly;**
- b) Valid explanation for the delay; and**
- c) Lack of negligence on the part of the Applicant.**

Looking at the reasons adduced by the Applicant, it is obvious that the Applicant had been prompt in filing this application. It is in the submission of the Applicant that he did not rest after the Appeal was struck out immediately steps were taken to initiate the process in aim of filing this instant Application. It should be noted that the Appeal was struck out on the **11/10/2018** and by the **29/10/2018** this Application was filed already; it took the Applicant only **18 days** to file this Application.

It is my saying without hesitation that it is a reasonable period of filing the Application of extension of time before this honorable Court as from the time the same was struck out. I have also taken into consideration that the striking out was a cause of a technical cause and hence the Applicant deserves another chance to tackle the Appeal as he still intends to.

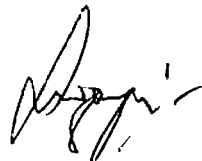
In the event therefore, I don't hesitate to conclude that the Applicant has shown sufficient cause to move the Court to exercise its discretional powers under **Section 14(1) of the**

Law of Limitation Act Cap. 89 [R.E. 2002] to grant the prayer sought.

It is from the above reasons, I find this Application to have merit. **It is hereby granted accordingly.**

I make no order as to costs.

It is so ordered.



L. E. MGONYA
JUDGE
25/10/2019

COURT: Ruling delivered in the presence of Levina C. Olomi, Advocate for the Applicant, Mr. Mohamed Shaban, Advocate for the Respondents and Ms. Emma RMA in my chamber today 25th day of October, 2019.



L. E. MGONYA
JUDGE
25/10/2019