

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

AT SHINYANGA

MISC.CIVIL APPEAL NO. 02 OF 2019

*(Arising from Misc.Civil Application No 49 of 2018 of the District Court of Shinyanga
originated from Civil case No. 33 of 2018 at Isagehe primary Court)*

SALUM S/O MIHAMBO..... APPELLANT

VERSUS

PETERS/O FRANCIS KAWAWA..... RESPONDENT

JUDGMENT

Date: 12.03.2020 and 8/5/2020

MKWIZU, J.:

Appellant was dragged to the Isagehe primary court vide civil case no 33 of 2018 which ended in favour of the respondent. He delayed to take necessary steps in appealing to the District court. He therefore by a chamber summons supported by an affidavit filed an application for extension of time to appeal out of time. The District court found that the applicant (now appellant) had adduced no sufficient reasons to allow the application and that the appeal had no chances of success.

Dissatisfied, he has appealed to this court on three grounds of appeal to the effect that, the District court erred in entertaining the application while

the same was brought under a wrong provision of the law, the District court failed to consider that appellant had no knowledge of his right of appeal and that he was denied his constitutional right of appeal.

The hearing of this appeal was on 12th March 2020. Both parties were in person, unrepresented. Being laypersons, their submissions were brief.

Submitting in support of the appeal, appellant stated that he was denied his constitutional right of appeal and therefore his appeal should be allowed.

On his part, respondent was in opposition of the appeal. He argued that appellant was present when the decision against him was pronounced and he was given 30 days within which to appeal but he chose not to.

I have cautiously considered the grounds of appeal presented, records of appeal and the parties' submissions. It should be observed here that indeed, the court has discretion to extend time but such extension, can only be exercised if "sufficient reason" has been given. See the case of **Oswald Masatu Mwizarubi V Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010. In this case, the reasons given by the appellant at the District court was that he was not informed of his right of appeal and that he was

not aware of such a right. I have perused the courts records. Trial courts judgement was given on 14/6/2018 by LC.Chisanga PCM, the decision specifically provides at the last page of the typed judgement that right of appeal is within 30 days from the date of the decision. The appellant did not file appeal, he stayed until 6/12/2018 almost six months later and filed the application for extension of time subject of this appeal. Before the District Court, Appellant did not manage to explain away the delay, he complained of not being informed of his right of appeal. He did not however say when and how he became aware that he was supposed to appeal. It would appear that the application for extension of time was filed as an afterthought. All in all the delay of six months is inordinate and it was not accounted for.

When the appellant appeared before me in person to prosecute this appeal, he only complained of being denied his constitutional right of appeal. He did not tell the court why he was late and why he is faulting the District court's decision on this point. In view of this, I am constrained to hold that this is unexplained unreasonable delay should be accredited to the appellant's own dilatory conduct. The said delay could not be justified.

All said and done, I find the appeal devoid of merit. It is hereby dismissed.

Taking into consideration nature of the parties, I make no order as to costs.

Dated at **Shinyanga** this 8th day of **May**, 2020

