

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

MISCELLANEOUS CIVIL APPLICATION NO. 659 OF 2019

(Originating from Civil Case No. 338 of 2014 from Resident Magistrate Court of Dar Es Salaam at Kisutu)

HASSAN SULEIMAN MTENGA----- APPLICANT

VERSUS

JOSEPHINE SHEM ARON KYOGO ----- RESPONDENT

RULING

Date of last order: 10.06.2020

Date of Ruling: 15.07.2020

Ebrahim, J.:

The applicant herein had initially lodged an appeal in this court which was struck out on 20th September 2019 for being accompanied by an invalid decree with an order that the trial court should issue a valid decree. On 12th December 2019 the Applicant filed the instant application praying for extension of time to lodge his appeal again against the decision of the Resident Magistrate Court. The application has been brought under **Section 14(1) and (2) of the Law of Limitation Act, Cap 89 RE 2002 and Order XLIII Rule 2 of the Civil Procedure Code, Cap 33 RE 2002.**

The application is supported by an affidavit of Mr. Hassan Suleman Mtenga, the Applicant.

When parties appeared before me the applicant was represented by advocate Apolinary and the Respondent appeared in person.

Counsel for the Applicant told the court that their appeal was struck out with direction that the decree be rectified. Therefore the prescribed time to appeal has lapsed and they pray for extension of time to lodge their appeal again.

The Respondent prayed to adopt her counter affidavit and argued that she sent the Applicant a correct decree and prayed for the dismissal of the application.

Counsel for the Applicant reiterated the prayers and insisted that the mistakes were done by the court.

Indisputably is the fact that the Applicant had initially lodged his appeal within appeal only to be struck out by the court for being accompanied by a defective decree. This court observed that the trial court's decree did not include the decision of the counter claim hence ordered for the same to be rectified.

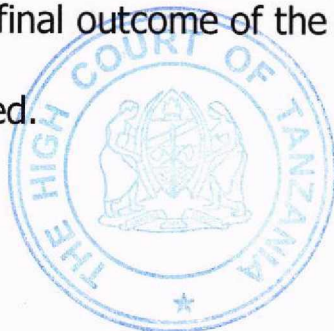
The Respondent stated in her counter affidavit that the correct decree was issued on 8th Day of November 2019 and that the Applicant by then was

within time to lodge his appeal. The Applicant lodged his appeal on 10th December 2019. Presumably, the Respondent's contention is on the fact that the limitation of 90 days of filing an appeal started to run from when the correct decree was issued.

Nevertheless, if we take into account the effect of striking out the appeal and the time when the judgement was delivered by the trial court, it is obvious that the Applicant was guided by that principle.

The above notwithstanding, I consider the fact that the Applicant had initially lodged his appeal within time which was later struck out by this court from the defects associated with the trial court. It is on those circumstances and for the interest of justice this court exercise its judicial discretion (**CITIBANK (Tanzania) Ltd V TTCL, TRA & Others**, Civil Application No 97 of 2003(CA-unreported) and allows the applicant to lodge his appeal in this court again out of time. The Applicant is availed 30 days from the date of being availed with the order of this ruling to present his appeal. Costs shall abide to the final outcome of the appeal.

Accordingly ordered.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim".

**R.A. Ebrahim
JUDGE**

**Dar Es Salaam
15.07.2020.**