

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

MISCELLANEOUS CIVIL APPLICATION NO. 566 OF 2019

(Arising from Ruling and Order of the District Court of Kilombero at Ifakara
in Probate and Administration Cause No. 01 of 2018)

LUWI PIUS MEZA

APPLICANT

VERSUS

SELINA PIUS MEZA

RESPONDENT

RULING

Date of last order: 24.06.2020

Date of Ruling: 22.07.2020

Ebrahim, J.:

The applicant herein has filed an application to be extended time to lodge an appeal before this court against the ruling and order of District Court of Kilombero at Ifakara. The application has been preferred under the provisions of **section 14(1) of the Law of Limitation Act, Cap 89 RE 2002;** and it is supported by the affidavit of Luwi Pius Meza, the Applicant.

The applicant averred in his affidavit that after being dissatisfied with the decision of the District Court which was delivered on 17th June 2019 whilst still within time on 24.06.2019 he wrote a letter to the trial court asking for copies of judgement and decree (Annexure LPM – 2). He averred further

that he was handed the copies of judgement and decree on 20th September 2019 (annexure LPM- 3). Thereafter he started looking for a legal representative to assist him to prepare the proceedings, hence the delay.

In her counter affidavit, the Respondent disputed the assertion by the Applicant and called for a strict proof thereof.

This application was argued by way of written submission. The Applicant was represented by Mr. Hassan Okwanya; and the Respondent was represented by Steven Mhando.

Submitting in support of the application, Counsel for the Applicant relying on **section 14(1) of the Law of Limitation Act, Cap 89 RE 2019** urged the court to see that the Applicant has been diligent in pursuing his case. He drew attention of the Court to para 4 (annexure LPM-2) into showing that the Applicant wrote a letter requesting for copies of judgement and decree on 19th June 2019. He further referred to **section 19(2) of the Law Of Limitation Act, Cap 89 RE 2019** on exclusion of time for obtaining requisite copies of judgement and decree by arguing that time started to run on 20th September 2019 when he was availed with the certified copies of the same. He cited the case of **Charles Rick Mulaki V William Jackson Magero**, Civil Appeal No. 69 of 2017 (HC-Unreported) to buttress his argument. He also talked at length on the constitutionality of fair hearing

and right to appeal and concluded that the Applicant has demonstrated good cause warranting this court to exercise its judicial discretion to extend time.

Responding to the arguments by the Counsel for the Applicant, Counsel for the Respondent contended that the Applicant's Affidavit contains no evidence of his delay from when he was supplied with copies of ruling on 20th September 2019. He contended further that the Applicant delayed for almost 27 days ever since he was supplied with copies of ruling and there is no explanation that barred the Applicant from appealing in time. He referred to the Court of Appeal case of **Vodacom Foundation Vs. Commissioner General (TRA)**, Civil Application No. 107/2017; which quoted with approval the case of **Bushiri Hassan Vs Latifa Lukio Mashayo**, Civil Application No. 03/2007 which insisted on the principle that a delay of even a single day has to be accounted for otherwise it would render the rules prescribing periods redundant. He further referred to the case of **Dr. Ally Shabha Vs. Tanga Bohora Jamaat** [1997] TLR 305 where the Court of Appeal held the principle that:

"Those who come to courts of law must not show unnecessary delay in doing so, they must show great diligence".

He thus prayed for the application to be dismissed for failure to account for each day of delay and assign good cause for the delay.

In rejoinder, the Applicant's Counsel repeated his contention in view of the interpretation of **section 19(2) of Cap 89, RE 2019**.

It is true that **Section 19(2) of the Law of Limitation Act** excludes time passed within which the Applicant was seeking for requisite documents provided that the applicant was prompt and within time in seeking the same. Indisputably is the fact that the copy of judgement and decree of the lower court were availed to the Applicant on 20th September 2019 as exhibited by annexure **LPM-3**. Indisputably again is the fact that the Applicant wrote a letter to District Magistrate Incharge of Ifakara which was received 24th June 2019 seeking for copies of Judgement and decree seven days after the decision of the lower court. The Applicant filed the instant application on 18th October 2019. Counsel for the Respondent stresses that the Applicant has failed to account for the delay and establish sufficient reason. He cited a number of cases to support his contention. While I agree with the principles of the cited cases by the Respondent's Counsel, still those cases are distinguishable to the circumstances of this case on the basis that the instant matter falls within the ambit of the intention of **section 19(2) of Cap 89**. This means, for all intent time started to run against the Applicant after being availed with the copy of judgement and decree i.e. 20.09.2019. Infact, the Applicant could have proceeded to lodge his appeal as he was well

within time when he filed the instant applicant which calls for no reason to assign each day of delay as there was none.

It is on those circumstances and in the interest of justice; I exercise the judicial discretion and extend time to the applicant to lodge his appeal. The applicant is availed fourteen (14) days from the date of being availed with a copy of this ruling and a drawn order to file the intended appeal in this court. Costs shall follow the outcome of the appeal.

Accordingly ordered



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over the printed name.

R.A. Ebrahim

JUDGE

Dar Es Salaam

22.07.2020.