

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

MISC. CIVIL APPLICATION NO. 236 OF 2019

*(Arising from Civil Appeal No. 6 of 2017 Bagamoyo District Court;
Origin Civil Case No. 22 of 2017 Kerege Primary Court)*

JOSEPH CHARLES.....APPLICANT

VERSUS

ELIAKUNDA DAUDI.....RESPONDENT

RULING

Date of Last Order: 2/6/2020.

Date of Ruling: 22/07/2020

S.M. KULITA J;

This is an application for an extension of time to appeal to the High Court. The application is made under section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2002] and Section 95 of the Civil Procedure Code [Cap 33 RE 2002]. It is accompanied with a chamber summons and the affidavit deponed by **JOSEPH CHARLES**, the applicant. The said applicant seeks for the extension of time to file an appeal against the judgment and decree of the Bagamoyo District Court in the Civil Case No. 06 of 2017. The application was heard by way of written submissions.

The applicant through his Advocate, Mr. Peter Madaha submitted that the applicant successfully filed his petition of appeal in time before this court, however the said appeal was struck out on the 26th February, 2019 following the Preliminary Objection raised by the Respondent. He further submitted that the applicant has a good cause to apply for extension of time for his appeal to be heard on merit. He cited section 21(1) of the Law of Limitation Act basing his argument on the ground that the appeal was first struck out for being incompetent, the time from which the said defect was observed by the court should be excluded.

In establishing good cause Mr. Madaha submitted that the decision of the lower court contains irregularities which can be cured by way of appeal. To support his argument that good reasons amount to the grant of extension of time Mr. Madaha cited the cases of **RAMADHANI ALLY MSETA V. RASHID RAMADHANI KIHEMBA, Miscellaneous Land Application No.808 of 2017, High Court Land Division at DSM** and the case of **The ATTORNEY GENERAL V. TANZANIA PORTS AUTHORITY & ALEX MSAMA MWITA, Civil Application No. 87 of 2016, CAT at DSM (Unreported).**

Mr. Madaha concluded his submission by praying for the application to be granted.

Replying to the applicant's submission, the respondent through his Advocate, Mr. Ezron Jasson submitted that section 14 (1) of the Law of Limitation Act gives the court discretionary powers to grant extension of time. He submitted that the appeal being struck out due to technicalities is not a ground for the grant of extension of time. He said that for the applicant to be granted extension of time he is required to establish sufficient/good reasons. He said that the applicant has not established good cause for this court to grant extension of time. Mr. Ezron cited the Court of Appeal case namely **CALICO TEXTILE INDUSTRIES LTD V. PYARRARI ESMALI PREMJI (1983) TLR 28** and the case of **DAPHNE PARRY V. MURRAY ALEXANDER CARSON (1963) E.A 546**, which expounded what amounts to sufficient cause. He said that struck out of the case is not among the grounds.

Mr. Jasson Ezron concluded his submission by praying for this application to be dismissed.

Having carefully considered the rival submissions by both parties, I have this to say, It is a trite law that an application for extension of time is entirely in the discretion of the court, however such discretion should be exercised judiciously by considering the guidelines as established in the celebrated case of

LYAMUYA CONSTRUCTION COMPANY LTD V. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010 (UNREPORTED) in which the following conditions are supposed to be fulfilled for the application of extension of time to be granted;

- i. *The applicant must account for all the period of delay.*
- ii. *The delay should not be inordinate.*
- iii. *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. *If the court feels there are other sufficient reasons such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenge.*

In the matter at hand the applicant submitted and pleaded at paragraph 3 of the affidavit that he filed the appeal in time but the same was struck out due to legal technicalities. In his submission the applicant's counsel Mr. Madaha submitted that the time from which the matter was struck out should be excluded in computing time. However, since the matter was struck on the 28th February, 2019 and the present matter was filed on the 2nd May, 2019 a period of 64 days had passed. That is a long time

since the intended appeal was struck out. The delay was therefore inordinate. The applicant had enough time to amend the said technical defect and promptly file the proper appeal before the court within a few days.

The applicant has not given an account of delay as from 1st March, 2019, the date that the ruling of struck out was delivered to 2nd May, 2019 when the instant application was filed.

Not only that but also I can see no point of law that the applicant can establish even if he is allowed to appeal before this court as the 1st appellate court was right to order the applicant to go back to the trial primary court to seek for an order of setting aside the ex-parte judgment that it had entered and consequently the matter be heard on merit upon showing good cause.

In view of the foregoing analysis, I am satisfied that the applicant has failed to establish sufficient causes for him to be granted extension of time. The application is therefore dismissed with costs

He

S.M. KULITA

JUDGE

22/07/2020

