

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 75 OF 2019

(Originating from Civil Appeal Number 164 of 2016 filed in High Court of Tanzania at Dar es Salaam and Civil Case No. 18 of 2013 at Kinondoni Resident Magistrates Court)

EFC TANZANIA M.F.C LIMITED.....APPLICANT

VERSUS

LILIAN HANSON KISAMO T/A LIKS STATIONERY.....RESPONDENT

RULING

Date of last Order: 19/02/2020

Date of Ruling: 27/03/2020

MLYAMBINA, J.

This is an application made under *Section 14 (1) and (2) of the Law of Limitation Act, Chapter 89 [R.E. 2002] Order XXXIX, Rule 19, Section 3A (1) and (2) Section 93 and 95 of the Civil Procedure Code Chapter [33 R.E. 2002]*. The application is supported by an affidavit of one Delphinus Mushumbusi. The main prayer of the applicant in this matter is for extension of time to enable the applicant to file an application for re-admission.

When the matter came for hearing both parties agreed to proceed by way of written submission. The applicant was represented by counsel Alfred Tawe. The respondent was represented by counsel Charles Tumaini.

Without making this ruling long, there are three issues to be decided in ascertaining whether the applicant has advanced sufficient cause to grant this application:

1. Whether the applicant acted negligently in pursuing her matter.
2. Whether the applicant accounted for each day of delay.
3. Whether this court can re-admit Civil Appeal under *Order XXXIX Rule 19 of the Civil Procedure Code Cap 33 now [R.E. 2019]* which was dismissed under *Order IX Rule 8 of the Civil Procedure Code (supra)*.

To begin with the first issue, in the affidavit and submission in chief, the applicant contended that she was not aware of the fact that the appeal was dismissed until 25th January, 2018. The applicant blamed her legal firm Zenith Attorneys for not attending the case.

The respondent in reply strongly disputed the applicant's contention. The respondent relied on annexure EFC3 attached on the applicant's affidavit concerning the termination of retainer agreement with Zeneth Attorneys which shows they were terminated on 18th January, 2017.

The respondent submitted that, when the case came for mention for the first time on 28th November, 2016 the applicant was

represented by Zenith Attorneys. When the case came for the second time on 22nd February, 2017 the applicant had terminated Zenith Attorneys already. As per annexure EFC, the applicant made it very clear on her termination letter that Zenith Attorney should handle over all files together with detailed update status of the case.

From the afore uncontroverted facts, the Court do agree with the respondent that it was the applicant's own sole negligence in making follow up of the case on 22nd February 2017, 18th April, 2017 and 21st June, 2017. In the cited case of *C.D Muganyizi and 4 Others v. the Attorney General and 4 Others* High Court of Tanzania, Main Registry Misc. Civil Cause No. 62 of 2003 the Court refused an application for extension for there was no sufficient cause for the delay.

Further, if this Court is to agree with the applicant that Zenith Attorneys acted negligently in pursuing interests of the applicant, there should be at least a proof from the applicant that she took legal or ethical action as against Zenith Attorneys. In this matter, there is no such proof. The only conclusion the Court can infer is that the applicant condoned such negligence.

On the second issue, there is no dispute from the applicant that the applicant had lodged Civil Appeal no. 164 of 2016 before this Court. The said appeal was dismissed for default on 21st June, 2017. There is no dispute that the applicant filed Misc. Civil Application No. 54 of 2018 seeking for extension of time to enable her bring an application for re-admission of the appeal.

There is no dispute that Misc. Civil Application was withdrawn on 7th December, 2018 with leave to refile but the same was not refiled till on 15th February, 2019. As replied by the respondent, the applicant failed to account for each day of delay. In the cited case of *Elfazi Nyatega and 3 others v. Caspian Mining Ltd*, Civil Application No. 44/08 of 2017 the court of appeal stated:

The position of this court has consistently been to the effect that in an application of extension of time, the applicant has to account for every day of the delay.

In order for the Court to establish whether there was a good cause depends on whether the application for extension of time has been brought promptly. That is the position in the case of *International Airline of The United Arab Emirates v. Nasorro*, Civil Application No. 263 of 2016 Court of Appeal of Tanzania at Dar es Salaam at page 7 (unreported).

As regards the third issue, *Order XXXIX Rule 19 of the Civil Procedure Code (Supra)* cited by the applicant reads:

Where an appeal is dismissed under *Sub Rule (2) of Rule 11 or Rule 17 or Rule 18*, the appellant may apply to the Court for the re-admission of the appeal, and where it is proved that he was prevented by any sufficient cause from appearing where the appeal was called for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

As submitted by the respondent, the appeal sought to be re-admitted was not dismissed under *Sub Rule 2 of Rule 18 of Order XXXIX of the Civil Procedure Code (supra)*. As properly put by the respondent, the applicant has asked this court to fix the airplane's engine into the motor vehicle-without considering the major important factors for it to function.

In the premises, the application stands dismissed with costs for lack of merits.

Y. J. MLYAMBINA

JUDGE

27/03/2020

Ruling delivered and dated 27th March, 2020 in the presence of Counsel Steven Mayomo for the applicant and Consolata Malolela for the respondent.



Y. J. MLYAMBINA

JUDGE

27/03/2020