

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 478 OF 2019

*(Originating from Appeal No. 9 of 2018 of the High Court of Tanzania at Dar es Salaam
honorable B.R. Mutungi judge dated 24th day of July 2019)*

NG'WENA MWITA.....APPLICANT

VERSUS

AGNESS KIMANDA.....1ST RESPONDENT

RULING

Date of last Order: 05/03/2020

Date of Ruling: 11/03/2020

MLYAMBINA, J.

The application has been preferred under *Section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E. 2002*. The applicant prayed for the following orders:

- i) That, the Honorable Court may be pleased to grant leave to the applicant to file notice of intention to appeal out of time before the Court of Appeal of Tanzania at Dar es salaam against the judgement and decree delivered by honorable B.R. Mutungi Judge of the High Court of Tanzania at Dar es Salaam in Civil Appeal No. 9 of 2018 dated 24th July, 2019.

- ii) That, Honorable Court may be pleased to grant leave to the applicant so as to file an application for certificate on point of law out of time against an Appeal no. 9 of 2018
- iii) Any other relief this Honorable Court may deem fit and just to grant.

The application has been supported with an affidavit of the Applicant Ng'wena Mwita.

There is no dispute that the applicant has been dissatisfied with the decision of this Court in Civil Appeal No. 9 of 2018 dated 24th July, 2019. The reasons for the delay to file an appeal as contained in the supporting affidavit are as follows:

First, the applicant is a layperson who is entirely depending on Legal and Human Right Centre to process her appeal.

Second, the applicant lives at Mwanza Region. On 22nd august, 2019 the applicant made close follow up of her appeal progress at Human Right Centre and found neither notice nor appeal was processed.

Third, the applicant engaged TAWLA on 22nd August, 2019. Later, it was observed that the respondent in this matter was their client
Fourth, on 28th day of august, 2019 the applicant received an

assistance from NARROTA lawyers who prepared this entire application.

Fifth, there are three points of law to be determined by the Court of Appeal of Tanzania namely:

- i) Whether the evidence adduced in Court by the respondent was properly determined purported to the child named Ryoba Robi (born out of wedlock) and;
- ii) Whether the child Ryoba Robi or sometime called Francis Waryoba is entitled to benefit from the estate of the late Robi Chacha Matiko and;
- iii) Whether the material witnesses were called in Court to prove the doubts raised by the appellant against the respondent.

The application was objected by the 1st respondent on *inter alia* ground that it is the applicant who delayed to request for the copies of judgement and proceedings within the provided time.

The 1st Respondent asserted *inter alia* that the judgement in Civil Appeal No. 9 of 2018 was delivered on the 24th July, 2019. The copy of judgement was ready for collection within the same day. Thus, it is the applicant who negligently delayed to make follow up to obtain her copies.

In view of the 1st respondent, the applicant lacks good reason to appeal to the Court of Appeal of Tanzania.

In the light of the afore reasons advanced by the applicant, I find the ground on ignorance of the law has never been a good reason for extension. (See *Bakari Said Majondo and 2 Others v. Selemani Mohamed Namkata*, Misc. Land Case Application No. 20 of 2017 High Court of Tanzania at Mtwara).

Most important, the applicant has not accounted for each day of delay from the day the impugned decision was issued, that is, on 24th July, 2019 to the 22nd day of August, 2019 when she travelled to Dar es Salaam.

Even if it is found that the blame be posed to Legal Aid and Human Right Centre, as the applicant enjoyed legal aid from them, there are no good reason as to why this application was filed on 12th September, 2019 while the applicant was discharged from the service of Legal and Human Right Centre on 23rd August, 2019.

Generally, the applicant failed to account each day of delay as required by the law. (See *Kombe Charles Richard Kombe v. Kinondoni Municipal Council*, Civil Application No. 379/01 of 2018 and *Lyamuya Construction Company Ltd v. Board of Trustees of*

Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 Court of Appeal of Tanzania.

In the circumstances of the above, I find the application is devoid of any merits for failure to account each day of delay. Consequently, the application is dismissed. As the application stems from probate cause, let each party bear her own costs.



Y. J. MLYAMBINA
JUDGE
11/03/2020

Ruling delivered and dated 11th March 2020 in the presence of both parties in person.



Y. J. MLYAMBINA
JUDGE
11/03/2020