

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. CIVIL APPLICATION NO. 22 OF 2020

**BHOKE ERNEST GHATI MACHORI APPLICANT
VERSUS**

DANIEL JOSEPH 1ST RESPONDENT

MACHORI MWITA MACHORI 2ND RESPONDENT

MWITA MNIKO MWITA 3RD RESPONDENT

MWITA MACHORI 4TH RESPONDENT

*(Arising from Civil Application No. 12/2018 of the District Court of Tarime delivered on
28/11/2019)*

RULING

*14th & 20th July, 2020
Kahyoza, J*

This is an application for extension of time filed under section 14 (D) of the **Law of Limitation Act**, [Cap 89 R.E 2002].

Brief back ground is that, the applicant filed an application seeking an order to exhume and make proper burial of the body of her late father one **Ernest Ghati @ Machori** in his shamba located at TAGARE – Tarime District. The applicant lost. The District court delivered its ruling on the 28/11/2019. The applicant quickly lodged an appeal, which was baptized as Civil Appeal No. 24/2019 before this Court. The Court struck out the appeal on the 20/2/2020.

The appeal was struck out on the account of errors in the ruling. The applicant contended that she made follow to have the ruling of the district court rectified. The ruling was rectified and supplied to the applicant on the 31/3/2020. The applicant instituted the current application on the 8/4/2020.

The first respondent opposed the application on the ground that the applicant was the one who occasioned the errors that forced this Court to strike out the appeal.

It is trite law that a person applying to extension of time has to give sufficient reason for delay. Refer to the case of **Mumello v. Bank of Tanzania** [2006] E.A. 227. In that case, the court observed as follows-

*"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it **has been sufficiently established that the delay was due to sufficient cause.**"*

The only ground advanced by the applicant is that she delayed to appeal because her appeal filed on time was struck out on accounts of the errors in the ruling of the District Court. She also spent some waiting a rectified copy of the ruling. I have noted from the records of the district court that it rectified its ruling and certified it on the 28th November, 2019.

The applicant's delay to reinstituted the appeal was not based on her negligence. She appealed on time and her appeal was struck out on the ground that the ruling contained errors. This was a technical delay. **It is trite law that a party should not be condemned for a technical delay.**

Thus, technical delays are excusable. This stance was enunciated by the Court of Appeal in **William Shija and another v. Fortunatus Masha**[1997] T.L.R.213. The Court of Appeal stated the following -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

In the upshot, I find that the applicant has adduced sufficient reason for her delay. I allow the application and grant the applicant 30 days within which to lodge her appeal. Cost of this application shall be costs in due course depending on the outcome of the appeal to be instituted. If, no appeal is filed, the costs shall be borne by the applicant.

It is ordered accordingly.

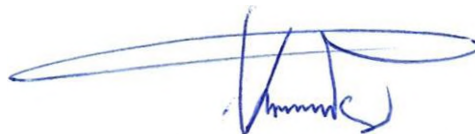


J. R. Kahyoza

JUDGE

20/7/2020

Court: Ruling delivered in the presence of the applicant and the 1st Respondent.



J. R. Kahyoza, J.

20/7/2020

