

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 743 OF 2018**

*(Originating from the decision of High Court in Pc. Civil Appeal No. 18 of 2016 as delivered by Hon. E.M FELESHI, J. (as he then was) on 26<sup>th</sup> August 2016)*

**JACKSON TEMBA.....APPLICANT**

***VERSUS***

**MAGRETH COSMAS.....RESPONDENT**

**RULING**

**Date of last Order:** 05/08/2020

**Date of Ruling:** 30/10/2020

**MLYAMBINA, J.**

By way of Chamber Summons made under *Sections 14 (1) of the Law of Limitation Act Cap 89 (R. E. 2002) and Rules 47 and 83 (4) of the Tanzania Court of Appeal Rules, 2009 (made Under Section 12 of the Appellate Jurisdiction Act Cap 141 (R. E. 2002)*, the Applicant sought for an order extending time in which to lodge Notice of Appeal followed by filing an application of Certificate certifying there is a point of law involved in the appeal out of time.

The application is supported with the affidavit of the Applicant, Jackson Temba. There are two paragraphs in the affidavit that gives reasons for this application:

2. That, this Honourable Court in its emanated Judgment in *PC. Civil Appeal No. 18 of 2016* delivered by Honourable. E. M. Feleshi, J. (as he then was) on 26<sup>th</sup> August, 2018 dismissed the appeal for being time barred; and in consecutive dismissed applications filed in this Court one in *Misc. Civil Application No. 602 of 2016* seeking extension of time and the then application for review in *Civil Review No. 2 of 2018*. In the same spirit left the Applicant and the intended appellant with no other legal redress than appealing to Court of Appeal to cure the occasioned legal technicalities prohibiting pursuing appeal from a decision which is manifested as bad in law and lies chances of success on appeal.
3. That, this matter originated from Primary Court matters of legal technicalities should not have been given utmost attention to the expense of substantive justice on its peril where litigants appear in person without legal representation. This I was duly informed from legal consultation with a lawyer.

In his written submission, the Applicant stated *inter alia* that the delay as occasioned was due to waiting copies of Judgment and Proceedings. The Applicant called upon this Court to observe the applicability of *Section 37 (3) (c) of the Magistrates Courts Act*

which provides for substantial justice to be done without undue regard to technicalities. *Section 37 (3) (c)* provides:

*(3) In the exercise of their respective jurisdiction under this part the High Court and the District Courts.*

*(c) Shall not be required to conform to provisions of any rule of practice or procedure otherwise generally applicable in proceedings in the appellate or revision court.*

The Applicant went on to cite the decision in the case of **Thomas David Kirumbayo and Another v. Tanzania Telecommunications Co. Ltd**, Civil Application No 1 of 2005.

In response, the Respondent stated that an application for extension of time to appeal is entirely in the discretion of the Court to grant or refuse it and that extension of time may only be granted where it has been sufficiently established that the delay was within a sufficient cause. According to the Respondent, the Applicant has failed to extract a satisfactory explanation for the Applicant inordinate delay to file for the appeal for about two months since 21<sup>st</sup> September, 2018 after the Court dismissed the *Misc. Civil Application No. 2 of 2018* on the application of review of the *Misc. Civil Application No 602 of 2016*.

In this regard, the Respondent was of view that the Applicant lacks sufficient reason for extending the period of limitation. In that view, the Respondent cited the case of **Ratman v. Cumara Samy** (1965) 1 WLR 10 at page 12 wherein the Privy Council, in determining an appeal from Malaysia observed:

*The rules of Court must be obeyed, and in order to justify a Court in extending the time during which some step in procedure requires to be taken there must be some material upon which the Court can exercise its discretion. If the law was otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules, which is to provide a time table for the conduct of litigation.*

In this application, the Respondent was of further view that no material upon which the Court could exercise its discretion in favour of the Applicant. The Applicant has failed to satisfactory to explain the inordinate delay of 2 months to warrant extension of time. Under the said circumstances, the Respondent asserted that the application lacks merits hence be dismissed.

The Respondent went further to cite the case of **TUICO on behalf of 360 Employees of Morogoro Canvas Millis Ltd (MCM) v.**

**Morogoro Canvas Millis Ltd and 2 Others** Misc. Civil Application No. 45 of 2018 (unreported), whereby Honourable Matogolo J. in his ruling referred the decision of Court of Appeal in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Yong Woman Christians Associations**, Civil Application No. 2 of 2010. Massati, J A. has this to say at page 6 of that decision that:

*Four guidelines which should be observed by Court in granting extension of time that is:*

- a) That Applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The Applicant must show diligence, and not apathy, negligence or slowness in the prosecution of the act that he intends to take, and;*
- d) If the Court feels that there are other sufficient reasons, such as existence of the point of law sufficient importance; such as the illegality of the decision sought to be challenged.*

Another cited authority by the Respondent was the case of **the Registered Trustees of The Archdiocese of Dare Salaam v. The Chairman Bunju Village Government and 11 Others**,

Civil Appeal No. 147 of 2000 (unreported) **Region Manager, Tanroads Kagera v. Ruaha Concrete Company Limited** Civil Application No. 96 of 2007 Court of Appeal of Tanzania (unreported) and **Kalunga and Company Advocates v. National Bank of commerce** (2006) TLR 235, which emphasized on what constitutes a sufficient reason and need to demonstrate it in an application for extension of time. The Respondent prayed to the Court that since no sufficient reasons for failure have been adduced, the application be dismissed with costs.

According to the Respondent, the application aims to distort the course of justice, and thereby denying the Respondent to proceed with execution. Also, the Applicant is using a delay tactic by instituting multiple cases in this Court with ill motive of denying the Respondent to get her rights over the trial Court decision.

The Respondent insisted that this application has nothing concrete to move this Court rather than it contains calculated tactics engineered by the Applicant without any fear or shame in his intentions to delay and distort the course of justice and ultimately deny he Respondent rights and share of the matrimonial assets. The Applicants intentions to ensure that this matter is endless.

I have carefully considered the submissions of both parties. First of all, I must observe that, as submitted by the Respondent, the Applicant has not provided the Court with sufficient material to account for the delay. The application at hand was filed on 23<sup>rd</sup> November, 2018. The impugned Judgement was delivered on 26<sup>th</sup> August 2018 and the copy of Judgement was issued on 30<sup>th</sup> August, 2016. The ruling of first attempt for extension of time was delivered on 17<sup>th</sup> November, 2017. The ruling for the application for review was delivered on 21<sup>st</sup> September, 2018. The Applicant has not accounted for the more than two months delay to file this application.

I'm in agreement with the Respondent that the Applicant is deploying delay tactic so that the Respondent does not enjoy her decree. I have further noted even the cited decision in the case of **Thomas David Kirumbuyo and Another** (*supra*) is not in favour of the Applicant. At page 6 of that decision, the Court observed:

*In Order to ensure that the machinery of administering justice is not hampered, the Court is bound stringently. There is no exception provided under the rules for a relaxed application when laymen are involved as is the case here. All the more so, when it involves noncompliance with the rules on aspect which go to the root, the consequences are fatal... I cannot*

*therefore entertain the Applicant is lenience in applying the rules upon the fact they are laymen.*

Equally, in the case of **Dubra Abeid v. Honest Swai**, Misc. Civil Application No. 182 of 2017, the Court observed at page 8.

Further, as to the applicability of *Article 107 A (2) (e) of our Constitution* (supra), in the case of **Abubakari Ali Himid v. Endeard Nyelusye**, Civil Appeal No. 70 of 2010, Court of Appeal of Tanzania at Dar es Salaam (unreported) at page 10, the Court cited with approval the case of **Zuberi Musa v. Shinyanga Town Council**, Civil Application No. 100 of 2004 (unreported) where it was stated:

*Article 107 A (2) (e) is so couched that in itself it is both conclusive and exclusive of any opposite interpretation. A purposive interpretation makes it plain that it should be taken as a guideline for Court action and not as an iron clad rule which bars the courts from taking cognizance of salutary rules of procedure which when properly employed held to enhance the quality of justice. It recognizes the importance of such rules in the Orderly and predictable administration of justice ... in the event, I subscribe to the above two legal positions*



*and proceed to knock out the Applicant's explanations pegged under the umbrella of the noble constitution.*

In the view of the foregoing observation and authorities, I 'm satisfied that the Applicant's hide on being a layman is not a sufficient cause for this Court to overturn the already laid down principle of producing sufficient material to benefit extension of time. The principle of acting diligently neither knows sympathy on a person being a layman nor does it create different or discriminative treatment in law among or between legal persons.

I therefore end the ruling by dismissing this application with costs for being devoid of merits. It is so Ordered.

**Y. J. MLYAMBINA**  
**JUDGE**  
**30/10/2020**



Ruling delivered and dated 30<sup>th</sup> October, 2020 in the absence of the Applicant and in the presence of the Respondent in person.

**Y. J. MLYAMBINA**  
**JUDGE**  
**30/10/2020**

