

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

**MISC. CIVIL APPLICATION NO. 778 OF 2018**

*(Originated from the Judgment of the District Court of Kinondoni Hon. Lihamwike, RM)  
in Civil Revision No.1 of 2018 dated 13 September 2018)*

**CATHERINE VICENT JOHN.....APPLICANT**

**VERSUS**

**FESTO VICENT.....RESPONDENT**

**RULING**

**Date of last Order:** 22/07/2020  
**Date of Ruling:** 13/10/2020

**MLYAMBINA, J.**

The Chamber Summons made Under *Section 25 (1) (b) of the Magistrates Courts Act Cap 11 (R.E 2002)* aims at the grant by this Court three orders, namely:

1. That, this Court be pleased to extend time for the Applicant to file appeal out of time.
2. That, the Court be pleased to order stay of execution of the trial Court decision pending this application and the intended appeal.
3. Any other further relief the Court may deem fit and just to order.

The application is supported with the affidavit of Catherine Vicent John, the Applicant. The delay to file the appeal, as per the Applicant's affidavit and submission in chief, was failure to be supplied with copies of judgment and drawn order timely.

It is in record that the impugned decision was delivered by the District Court of Kinondoni on 13<sup>th</sup> September, 2018. It is further in record that the Applicant's advocate requested certified copies of Judgment and Decree on 24<sup>th</sup> September, 2018. However, as per paragraph 5 of the supporting affidavit, the Applicant was not supplied with the said copies until 22<sup>nd</sup> November, 2018. By then the Applicant was out of time.

The application was resisted by the Respondent through his Counter Affidavit sworn and dated 13<sup>th</sup> June, 2019.

In her written submission to expound the application, the Applicant left the second prayer un-attended. As regards the prayer for extension of time, the Applicant reiterated the reason for delay being supplied late with the copies of judgment and decree. The Applicant cited the case of **Henry Muyaga v. Tanzania Telecommunication Company Ltd**, Application No. 8 of 2011 in which the Court cited the case of **CRDB v. EDPB Construction Co. Ltd and Others**, Civil Application No. 50 of 2015 (unreported)

where the Court had an accession to map out the scope of the Court's Judicial discretion Under Rule 10:

*The discretion of the Court to extend time under rule 10 is unfettered but it has been held that, in considering an application under the rule, the Courts may take into consideration, such factors as, the length of the delay, the reason for the delay, the chance of success of the intended appeal and the degree of prejudice that the Respondent may suffer if the application is granted.*

It is unfortunate the Respondent refused to file written reply submissions. Through undated letter received by this Court on 26<sup>th</sup> May, 2020 the Respondent called upon my recusal to determine the application. The reason was the order for the application to be disposed by way of written submissions.

Though it is true that the Applicant is being represented by Senior Counsel Mrs. William and the Respondent is unrepresented, the application was to proceed by way of written submission partly on that account but largely because of safety during Covid -19 Pandemic. In any aspect, I don't think the Respondent has advanced a good/sufficient reason for recusal. There is no apprehension of biasness no any conflict of interest or tear. The

Respondent's request is out of sheer illusion. The governing principles for recusal were given by the Court of Appeal of Tanzania in the case of **Laurean Rugaimukamu v. Inspector General of Police and Another** (2004) TLR 204 in which it was held:

*An objection against a Judge or Magistrate can legitimately be raised in the following circumstances. **One** if there is evidence of bad blood between the litigant and the Judge concerned. **Two**, if the Judge has close relationship with the adversary party or one of them. **Three**, if the Judge or a member of his close family has an interest in the outcome of the litigation other than the administration of justice. A Judge or Magistrate should not be asked to disqualify himself or herself for flimsy or imaginary fears.*

In the case of the **Registered Trustees of Social Action Trust Fund and Another v. Happy Sausages Ltd and Others**, the Court stated.

*It would be an abdication of judicial function and encouragement of spurious applications for a Judicial Officer to adopt the approach that he /she should disqualify himself/herself whenever requested to do so on application of one of the parties on the grounds of possible appearance of*

*bias...the test for apparent bias is whether the alleged circumstances would lead a fair minded and informed observer to conclude that there was a real possibility that the Court was biased.*

Going through the Respondent's letter, I find the Respondent's reasons for recusal are flimsy and do not raise any significant ground for recusal.

Back to the merits of the application, it is established that the Applicant applied for the copies of Judgment which ought to have been a ruling, just ten days after the Judgment was delivered. It is also not disputed that the Applicant was supplied late the said copies, that is on 22<sup>nd</sup> November, 2018 and in December 2018 the Applicant lodged this application.

In terms of the decision of the Court of Appeal In the case of **Benedict Mumello** (Appellant) **v. Bank of Tanzania**, (Respondent), Civil Appeal No. 12 of 2002, I find the delay was with sufficient cause.

In the event, the 1<sup>st</sup> prayer is granted. The Applicant is given 14 days to lodge her appeal. Costs shall follow events.



**Y. J. MLYAMBINA**

**JUDGE**

**13/10/2020**

Ruling delivered and dated 13<sup>th</sup> day of October, 2020 in the presence of Mrs. William Advocate for the Applicant and in the presence of the Respondent in person.



**Y. J. MLYAMBINA**

**JUDGE**

**13/10/2020**