

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)
AT ARUSHA**

MISC- CIVIL APPLICATION NO. 114 OF 2019

*(Originating from Application for leave to file an Appeal out of time C/F Civil Application
No. 14/2017 Before the Juvenile Court of Arusha at Arusha Urban Primary Court)*

JULIUS EMMANUEL.....APPLICANT

VERSUS

MERY SILVESTER.....RESPONDENT

RULING

21/10/2020 & 21/10/2020

MZUNA, J:-

This is an application for leave to appeal to this Court out of time. The application has been preferred under Section 14 (1) of the Law of Limitation Act Cap. 89 R.E. 2002 and Section 95 of the CPC, Cap 33 R.E. 2002.

During hearing parties appeared in person. The applicant argued his case in line with the filed affidavit. The respondent did not file a counter affidavit. She said had no objection to this application.

The main issue is whether there is sufficient cause shown for delay in filling the appeal within time?

Reading the filed affidavit (paragraph 10, 11, and 12) the applicant has attributed the delay to be due to delay in supply of copy of the decision and Drawn Order. Another ground is that the order for

maintenance of Tshs. 200,000/- monthly is too high compared to his economic capacity.

These are points which in my view are sufficient reasons to justify extension of time.

This Court in the case of **Samson Kishosha Gabba Vs Charles Kingongo Gabba** [1990] TLR 133 held that:

"In determining whether or not to allow an application for leave to appeal out of time the Court has to consider reasons for the delay as well as likelihood of success of the intended appeal".

I have careful read the affidavit and the submission by the applicant. He says the impugned decision was delivered on 17/10/2019 in their absence and unaware. That the copy was served to him on 15/11/2019. This application was filed on 14/11/2019; it seems a day before being served with it.

I see no negligence on his part. He exercised diligence and the delay was beyond his power or control. Secondly, I find there is need for the appeal Court to determine the matter in controversy. The respondent never opposed the application.

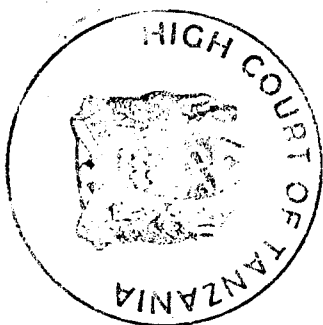
Application is allowed with no order for costs. Appeal be filed within 21 days from today.

M.G. MZUNA

JUDGE

21/10/2020

Court: Ruling is delivered this 21st day of October, 2020 in the presence of both parties.




M.G. MZUNA
JUDGE
21/10/2020