

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

MSC CIVIL APPLICATION NO. 1 OF 2020

(Arising from decision in Probate appeal No 2 of 2017 dated of the Kishapu District at Kishapu dated 06/4/2017 and the ruling of Mkeha J Dated 29th November, 2019.)

KASHINJE MAWEAPPLICANT

VERSUS

HAMISI BUTONDO.....RESPONDENT

EXPARTE - RULING

Date of last order: 03.03.2020

Date of Ruling: 20.03.2020

MKWIZU, J.:

Kashinje Mawe, applicant, filed this application by way of Chamber summons made under section 25 (1) (b) of the Magistrate's court act, (Cap 11 R.E. 2002) and rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary courts) Rules, GN No. 312 of 1964.

On 29th November, 2019 the applicant application for extension of time to file a petition of appeal was struck out for being incompetent on the ground of conflict of interest on the part of the applicant's advocate. It was found that the applicant's advocate who drew the application and

the supporting affidavit had assisted the respondent in the District Court in the appeal that resulted into application that was before the court.

Thereafter on 6th January, 2020, the applicant came with the present application. In his notice of motion, the applicant is moving the court for an order that:-

"a. That may the Honourable court be pleased to extend the time for filing the Petition of Appeal for Probate Appeal No 2 of 2017 of Kishapu District court.

b. Costs

c. Any other and further relief(s) as the honourable court may deem just to grant."

The notice of motion is supported by an affidavit sworn by the applicant himself. The relevant paragraphs are paras 2-9. They read thus: -

"2. That, the judgment for Probate Appeal No. 2 of 2017 of the Kishapu District Court was delivered on the 6th April 2017 in the presence of the applicant who was by then the appellant.

3. That, the applicant went on making the follow up but the reasons know to the appellate court the applicant was not given the said copies of the judgment and proceedings until the 4th May 2017.

4.That, by the time the applicant was given the copies of the judgment and proceedings, the time for filling the petition of appeal had expired.

5.That, it was important to get the copies of the judgment in order to present the same to the advocate for the institution of the said appeal.

6.That, the judgment of Probate Appeal No. 2 contained illegality.

7.That, together with this application, the applicant has annexed the copy of the petition of appeal for the court to go through them and see the probability the applicant has in the intended appeal.

8.That, the late filling of the petition of appeal before the Kishapu District Court was out of control and capacity of the applicant.

9.That, applicant filled application No. 15 of 2017 which was struck out on the 29th November 2019 on the ground that the advocate for the applicant had an interest on the application hence this application."

Section 25 (1) (b) of the MCA vests the High court with powers, to extend the time whether before or after the expiration of that time. Provided by the law. The section reads:-

*"In any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; **and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.**"*
(Emphasis added)

The central issue for consideration and determination is whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant. The law on the issue is now well established. It is trite law that in considering whether or not to grant such extension of time, courts take into account these factors namely, the length of the delay; the reason for the delay; was the delay caused or contributed by the dilatory conduct of the applicant?; whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision

sought to be challenged; and/or the degree of prejudice to the opposite party if the application is granted. See, for instance the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] T.L.R. 185 and **VIP Engineering and Marketing Limited and Three Others v Citibank Tanzania Limited**, consolidated Civil Reference No. 6,7 and 8 of 2006 CA (unreported).

I have carefully considered the applicant's affidavit, counter affidavit and the oral submission by the applicant. The district court's decision that dismissed the applicant's appeal was delivered on 6/4/2017. Applicant averred in her affidavit whose paragraphs are quoted above, that she was not until 4th May, 2017 supplied with the copy of the judgement and the proceedings. At this time, time to file the appeal had elapsed .She then filed an application No. 15 of 2017 for extension of time which was struck out on 29th November,2019 on the ground that her advocate had an interest in the application. Tirelessly, on 6th January, 2020 thirty-eight days after the order striking out the application for extension of time, applicant filed this application.

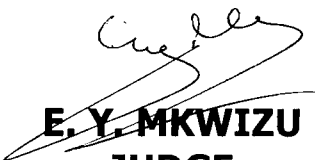
In her submission, applicant was short but focused ,She said, after the striking out of her application on 29/11/2019, she went on to looking for a lawyer who would prepared her documents for filing. She then filed this application on 6th day of January, 2020. Since the applicant was not idle but all along have been in this Court pursuing an incompetent application, that by itself constitutes good cause. See Robert **Schelten V. Balden Norataran Vaima and 2 Others**, Civil Application No.112 of 2016 (unreported).

The applicant, in addition, is alleging illegality on the decision to be appealed against. I have given a thoughtfully scrutiny to the application and all supporting documents. Guided by the authorities cited above, and in view of the fact that there is an alleged illegality in the decision of the District court, I find it, in the circumstance of this case, appropriate to allow the application on the basis of this point so that the issue may be considered.

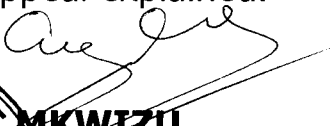

For the reason stated here in above, the application is granted. The intended petition of appeal should be filed within a period of thirty (30) days from the date of delivery of this Ruling. Costs to be in the cause.

It is so ordered.

DATED at SHINYANGA this 20th day of March, 2020.


E. Y. MKWIZU
JUDGE
20 /3/ 2020

Right of appeal explained.



E. Y. MKWIZU
JUDGE
27 /3/ 2020