

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM REGISTRY
AT DAR ES SALAAM
MISC CIVIL APPLICATION NO. 219 OF 2020**

FARAJA R. KUNDYA APPLICANT

VERSUS

MUNA ALPHA KUNDYA1ST RESPONDENT

MARIAM RAJABU KUNDYA 2ND RESPONDENT

Date of last Order:03/03/2021

Date of Ruling: 16/04/2021

R U L I N G

MGONYA, J.

The Application before the court is for this Honourable Court is for the following orders:

- (i) That this Honourable Court be pleased to grant the Applicant an order for extension of time to file an application for LEAVE to appeal to the Court of Appeal of Tanzania against the decision and drawn order of this Honourable Court delivered on 12th September, 2019 by Hon. Masabo J..***
- (ii) Any other relief this Honourable Court may deem fit to grant.***

The Chamber Summons has been made under section **14 (1) of the Law of Limitation Act, Cap 89 [R. E. 2002]**

and Rule 10 of the Court of Appeal Rules, 2009, and duly supported by the Applicant's Affidavit.

While the Applicant was representing himself, the 1st Respondent was represented by Advocate Imam Daffa. Whereas the 2nd Respondent despite of being served, she chose not to prosecute this Application. In the event therefore, the matter was determined *Exparte* against her.

Submitting on the application, the Applicant's Counsel submitted that as per the Affidavit's contents, the applicant is intending to appeal to the Court of Appeal on various issues of law against the above decision.

In support of the Application, the Applicant listed a number of factors which made him unable to file his Appeal on time hence this Application for extension of time. Among those is financial constraint, sickness and having eye problems.

It is from the said assertion, the 1st Respondent strongly objected the Application in both Counter Affidavit and in his Reply to the Applicant's written submission. The reason behind being the contradiction of the dates that the Applicants claiming to have been admitted and the fact that the Applicant had no any reasonable ground that could warrant this honourable court to grant the Application sought. In that event therefore, the 1st Respondent prayed the court to dismiss the Application with costs.

In the cause of determining this Application, I carefully read both parties' submission in support of the Application and their pleadings as initial documentation to the same, together with the attached Ruling by Hon. Masabo of which is the subject matter to appeal if extension of time is granted, of which I have read it carefully.

In examining the merits of the Application at hand, I am mindful that the Court of Appeal has in various cases insisted that in order for the Applicant to be granted extension of time to file an Application for leave to appeal, there must be a sufficient reason advanced by the Applicant herein to justify his delay.

It is obvious therefore that the Application for extension of time is not automatic, it is discretionary and there has to be sufficient reasons as was held in a case of ***BENEDICT MUMELLO VS. BANK OF TANZANIA, Civil Appeal No. 12 of 2012***, where the Court held *inter alia* that:

"It is trite law that an Application for extension of time 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 with sufficient cause."

It is in the court's record that the Appellant under paragraphs 4 and 5 of his Affidavit stated that he had financial constraints as he was unable to prosecute the matter at hand within time.

The record further reveals that, the Appellant alleged to have been sick and that he is having eye problems for a long time. And in the event therefore he was not negligent on his part to prosecute his case within statutory time.

I have to remind the parties that, it is a trite law that negligence, laxity, **financial constrain**, and ignorance do not constitute sufficient reason for the court to grant the Application. This position had to be placed in these temples of law as the time to litigate waits nobody and that the Law of Limitation is one of the key factors which has been placed to make sure that Litigants are on their toes all the time during litigations and that there are no endless litigations in that respect.

I have noted from the record that in several times the Applicant has to apply for extension of time so that he can be afforded with time to the next stage. I have to remind the Applicant that the matter at court is between two sides, the person who brings the matter in court and the person who is being called or rather brought in court who has no option but to adhere to the court orders.

Basing on above, and with consideration of the pleadings by the parties and their respective submissions, **I find no justifiable reasons advanced by the Applicant to grant the prayer sought.**

As the grant of extension of time is a court's discretion, I am satisfied that there is no sufficient reason that had been advanced by the Applicant in this Application for the order sought.

That being the case, I hereby proceed to **dismiss the Application at hand with costs only to the 1st Respondent.**

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

**L. E. MGONYA
JUDGE
16/04/2021**

Court: Ruling delivered in chamber in the presence of Mr. Emmam Daffa, Advocate for the 1st Respondent, the Applicant in person and Ms. Msuya RMA this 16th day of April, 2021.



A handwritten signature in blue ink, identical to the one above, appearing to read "L. E. Mgonya".

**L. E. MGONYA
JUDGE
16/4/2021**