

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC CIVIL APPLICATION NO. 160 OF 2020

(Arising from Land Application No. 119/2006 and Originating from Misc. Civil Application No. 136 of 2019)

LILIAN RICHARD (The Administratrix of
Estate of the late Esther Ishengoma)..... **APPLICANT**

VERSUS

IDD HAMIS **RESPONDENT**

RULING

18th Febr & 16th March, 2021

RUMANYIKA, J.:

The application is brought Under Section 11(1) of the Appellate Jurisdiction Cap 141 R.E. 2019. It is for extension of time within which Lilian Richard (the administratrix of the estate of the late Esther Ishengoma) (the applicant), with respect of the decision of this court (Ismail, J) dated 03/07/2020 to lodge a notice of appeal to the Court of Appeal. It is supported by affidavit of Lilian Richard whose contents advocate Julius Mushobozi for the applicant adopted during the hearing. Mr. Kassim Gilla learned counsel appeared for Iddi Hamis (the respondent). I think it is equally important to state it here that through mobile numbers

0767934787 and 0789300718 respectively the parties were heard by way audio teleconferencing.

Mr. Julius Muhsobozi learned counsel submitted: **(1)** that if anything, the 3 days delay was not her fault because therein between the applicant fell sick and she had to undergo some medication in government hospital (copy of medical chits, attached – Annexure "A" to the affidavit) and traditional healer of the remote Isingiro village Kaisho Karagwe district (copies of bus tickets Annexure "A" to the affidavit) where network was difficult **(2)** that at times, and the records showed it clearly, there was illegality namely counsel for the respondent in this case also one having had prepared some documents for the applicant therefore it resulted to miscarriage of justice **(3)** that given the extent, by itself delay of only three (3) days it constituted a sufficient ground for extension of time.

Having adopted contents of the counter affidavit Mr.Kassim Gilla, learned counsel submitted; **(1)** that if anything, the applicant may have fallen sick and or, on that ground she travelled outside territorial jurisdiction of this court yes, but according to the medical chits and proceedings of the courts, on the alleged 25/07/2020 and 25/02/2021 she was herein Mwanza leave alone the 01/10/2020 when also she attended

burial ceremonies here **(2)** that with the issue of illegality, the very learned counsel shouldn't have prepared and sign documents in Mwanza for the applicant because by that time (between March, 2020 – 2011) he was abroad in the UK attending a master degree course (LLM) that if anything, the alleged documents were for a different matter altogether much as also the alleged illegality it wasn't apparent on records (case of **Moto Matiko Mabanga V. Oil Energy and 2 Others**, Civil Application No. 463/01 of 2017 (CA) at Dar es Salaam, unreported (3) that however slight the delay may be, the applicant should have counted for each day of the delay. That is all.

The issue, and it is both trite law and bottom line is whether subject to absolute discretion of the court the applicant has assigned a sufficient ground for extension of time. The applicant may have fallen sick therefore on that ground compelled to remain back home being hospitalized at Buzuruga Government Health Centre of Ilemela district or, as the case may be away at Isingiro village Karagwe district under care of the traditional healer yes, but looking at the copies of the two medical chits appended, not only she attended to the health centre on 25/07/2020 latest but also she had not been admitted. With effect from 25/06/2020 she may have

been only exempted from duty for two weeks which took him say to 09/08/2021 and, according to Dr. Sande on or by 25/07/2020 the applicant had improved, yet according to records she lodged the instant application on 23/12/2020 say five (5) good months later much as if anything, the applicant may have had remained under care of the traditional healer from 13th July until 01/12/2020 yes, but as serious as the allegation it was, yet still the latter's affidavit should have, on that one supplemented the applicants affidavit but there wasn't one leave alone the fact that if at all, but without explanation the applicant filed the application 21 days later much as she was done with the said Kalimanzi Kayungi the traditional healer on 02/02/2020. I think time available for one to take necessary steps in courts of law cannot be open ended if at all costs the courts discouraged it so much the better.

In the upshot, the application is dismissed with costs. It is so ordered.

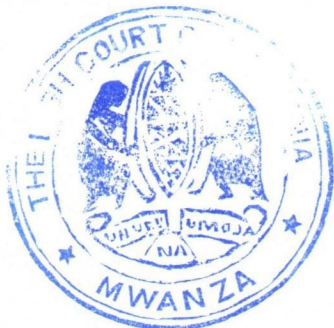
Right of appeal explained.


S. M. RUMANYIKA

JUDGE

07/05/2021

The ruling is delivered under my hand and seal of the court in chambers this 16/03/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

16/03/2021