

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION No. 284 OF 2020

DANIEL MWABE..... APPLICANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LTD.....RESPONDENT

(From the decision of the Court of Resident Magistrates of Dar-es
salaam at Kisutu)

(Mwaikambo- Esq, RM.)

dated 31st January 2020

in

Civil Case No. 297 of 2017

RULING

15th March & 13th April 2021

Rwizile, J

This is an application for extension of time. The applicant is applying for leave to file an appeal out of time. It is apparent that the applicant filed a civil claim against the respondent before the court of resident magistrates. His claims were however not successful. Despite being aggrieved with the decision of the trial court, he could not appeal in time. Discovering that time had run against him, by chamber summons supported by his affidavit, he filed this application. It is preferred under section 14(1) of the Law of Limitation Act, which is categorical, as a matter of law, that an

application for extension of time is to be filed first when one finds is time barred to appeal.

The applicant being represented by Mr. Edson Kilatu learned counsel argued this application before me orally. It was his submission basing on the affidavit of the applicant which was adopted that there are two main points for which this application should be granted, namely; that there are incidents of illegalities rooted in the fact that, this case was first heard by one magistrate (Kasonde-RM) who made a preliminary ruling that the court had jurisdiction to hear the case. When he was succeeded by another Magistrate (Mwaikambo-RM), she made a final ruling that this court had no jurisdiction to entertain the case.

On the second point, he submitted that after the decision, an application for copies of the judgement and decree were applied for but were supplied late when time to appeal had elapsed. In totality, Mr. Kilatu asked this court to refer to the following authorities on the two points respectively; **TanESCO & 2 others vs Salim Kabora**, Civil Application No. 68 of 2015 CA, (unreported) and the case of **Kumbwandumi Ndemfoo Ndossi vs Mtei Bus Service Ltd**, Civil Application No. 27/02 of 2016. CA, (unreported).

On the other side, the respondent whose representation was in Mr. Mapunda learned State Attorney, was of the submission that the application is untenable since the applicant failed to account for all days of delay. He was vehement that the application being filed 42 days after the time required, the applicant ought to procure enough and cogent evidence to prove all the allegations which caused the delay. The learned State Attorney asked this court to hold along the case of **Lyamuya Construction Company Ltd vs The Board of Trustees of Younger**

Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 and the case of **Elias Msonde vs R**, Criminal Appeal No. 3 of 2005

In order to appreciate the submissions of the parties, upon revisiting of the affidavit and its counter, one finds no dispute that this application was filed inordinately out of time. There is nothing that suggests that the delay was caused by late supply of the documents applied for by Mr. Kilatu. This is so because, the learned advocate did not show how that delayed him file an appeal. He said when the same was supplied, he was out of Dar-es Salaam dealing with other cases. This is a weak point to be considered in granting such applications.

It is now explicit that cases on this issue have been decided in sufficient numbers stating what are reasons for which this application can be granted or denied. In **Lyamuya's** case (supra), the court of appeal laid down four tests to consider, **one** accounting for all days of delay, **two**, the fact that delay is not inordinate, **three**, there should be diligence on party of the applicant, no sloppiness, apathy or negligence, and **four**, that the court has to look at an issue of importance such as illegality.

All said and done, the applicant did not account for all days of delay. In other words, the applicant did not comply with the first three points shown in the case above.

On the other hand, I have made a finding that at page 20 of the proceedings, the trial court ruled out that it had jurisdiction to hear the case. It was in response to the preliminary objection on jurisdiction. This means, as Mr. kilatu pointed out, there was a decision on jurisdiction made by one magistrate on 12 December 2018.

When the final decree came by, the other magistrate dismissed the case for want of jurisdiction. In my view, this is an illegality that may call for the attention of the High court to deal with. That is whether or not, the two magistrates acted correctly. Above all, in the case of **Joel Silomba vs R**, Criminal Application No.5 of 2012 (CA) (unreported). The court added that in considering whether such applications can be granted the court should also consider the degree of prejudice to the opposite party if the application is granted. Illegality as I have tried to show, and the fact that there is no any established amount of prejudice on party of the respondent if this application is granted. I see no reason to deny the same. For the foregoing reasons, I grant this application. The applicant is given 14 days to file the appeal. There is no order as to costs.

AK Rwizile
JUDGE
13. 04.2021

Delivered in the presence of Ms Martina for the applicant and Ms Nancy Mapunda for the respondent, this 13th day of April 2021

AK Rwizile
JUDGE
13. 04.2021



Recoverable Signature

X

Signed by: A.K.RWIZILE

