

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

AT ARUSHA

MISC. CIVIL APPLICATION NO. 47 OF 2020

(C/F Resident Magistrate's Court Civil Case No. 16 of 2018)

CHRISTINA LEMBRIS MOLLEL.....1ST APPLICANT

MUSTAPHA BOAY AKUNAAY2ND APPLICANT

VERSUS

MOSES MEIMARI LAIZER.....RESPONDENT

RULING

1/12/2020 & 26/2/2021

GWAE, J

This application is for extension of time within which to file an appeal to the court out of the prescribed period. The applicants seem to have been aggrieved by the decision of the Resident Magistrate Court delivered on the 18th February 2019.

According to the affidavit of the applicants' advocate one Emmiliana Emmanuel James, the applicants subsequent to the delivery of the ruling of the Resident Magistrate Court filed their notice of appeal on the 13th March 2019. Despite several demands for being supplied with certified copies of ruling and drawn order, the applicants were eventually supplied with the same on the 17th April 2020. That, on the 7th May 2020, the applicants filed their appeal to this court but the Statistic Dashboard System rejected their appeal by marking it out of time. The applicants' advocate went

on stating that on the 11th May 2020, the Deputy Registrar of this court advised her to file this application.

The respondent through an affidavit of one **Emmanuel Sood** (respondent's advocate) admitted all the averments of the applicants' advocate contained in the affidavit accompanying the applicants' application except that the applicants' assertion that they filed their appeal to the court by arguing that there is no proof that they filed their appeal through JSDS or any means.

This application was argued by way of written submission, the parties were duly represented by the advocates whose affidavits were filed to support and opposed this application as earlier explained. The parties' submissions were filed in conformity with court order. I am not going to reproduce what the counsel argued this application via their written submission however I am going to diligently consider the same in the course of determining, whether the applicants have given sufficient cause to warrant the court to extend time within which to file their appeal out of time.

Since the respondent did not dispute the applicants' affidavit in the paragraphs, 2, 3, 4 and 5 regarding applicants' request to be supplied with certified copies of ruling and drawn order, notice of appeal and that the applicants were undisputedly supplied with the requisite copies on the 17th April 2020 (See respondent's counter affidavit in the paragraph 3 "Contents of paragraphs 2, 3,4 and 5 of the applicants' affidavit are noted). Hence issue of further proof of a date of receipt of the ruling and drawn order does not arise in this application as the same is considered to have been admitted. If

the respondent had not admitted those facts I could have been supposed to adhere to the decision of my learned brother, Masabo, J in **Abdul Rahim Mohamed vs. Watumishi Housing Co. Ltd**, Land Case No. 93 of 2015 (unreported) where proof of asserted facts was found to be vitally important. In our present case, the applicants would have been required to prove that they were truly supplied with certified copies on the 17th April 2020 if the same was disputed by the respondent. As of now the respondent or his advocate is prevented by the doctrine of estoppel from disputing that fact in the course written submission as written submission is a mere guidance and not evidence.

That being the position, therefore, the issue for my determination of this application is, whether the applicants have accounted the delay from 17th April 2020 to the date this application was filed that is 2nd June 2020.

According to the Law of Limitation Act Cap 89, Revised Edition, 2019, prescribed time to appeal to the High Court against a decree or order of the District Court or Resident Magistrate Court is ninety (90) days. It follows therefore, if the applicants were supplied with the requisite documents on 17.4.2020 and this application was filed on 2.6.2020, to my view, their appeal would have been filed in time since days from which the applicants requested for obtaining the copies to when they were availed with the same is statutorily excluded (See section 19 of the Law of Limitation (Supra). This statutory position was judicially stressed by the Court of Appeal, full bench, in the

case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) at page 11 the court held that;

"In conclusion, we are of the firm view that, the delay to be supplied with copied of proceedings and judgment and the two copies of decrees containing different material particulars, contributed to the delay by the respondent to appeal within the prescribed period."

Similarly, according to the applicants' affidavit, the applicants requested for being availed the requisite copies since 13th March 2019 but due to problems that encountered the presiding magistrate (Hon. Nganga-RM) the same were finally signed by his successor.

Had the applicants' averment that, they were availed copies of judgment on 17.4.2020 been disputed, the applicants could have been required to prove that their filed an appeal through JSDS and that their advocate was subsequently advised to file this application by the Deputy Registrar of the Court by filing an affidavit of the DR since that evidence would material otherwise his reason would be considered not proved.


That being told, and in applying provisions of section 19 of the Law of Limitation Act (supra) I am obliged to exclude the dates from 13/03/2019 when the applicants applied for the requisite copies to 17th April 2020 when they were supplied with the same

I am of this view because the period of appealing to this court from the Court of Resident Magistrates or District Court is ninety (90) days from the date the decision or order against which it is desired to be appealed was delivered (Item 1 of Part II to the Schedule of the Law of Limitation Act). However, this is subject to the exclusion of days copies of decree or order have been requested for and when the documents so sought were availed in order to accompany an appeal, thus computation accrues on the date the certified copies were availed.

Consequently, this application is granted. The applicants are given ten (10) days from the date of this order within which to file their appeal. Costs of this application shall abide an outcome of an intended appeal.

It is so ordered.




M. R. GWAE
JUDGE
26/02/2020