

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 88 OF 2020

PROSPER NGAIZA NYAKALE..... APPLICANT

VERSUS

JENEROSE BULUMILE MKAMA..... RESPONDENT

Date of last order: 23/03/2021

Date of Ruling: 23/04/2021

R U L I N G

MGONYA, J.

In this application the Applicant, moves the Court under the provisions of ***section 11 (1) of the Law Appellate Jurisdiction Act, Cap. 141 R. E. 2002, R. 47 of the Tanzania Court of Appeal Rules G.N. No. 368 of 2009 and any other enabling provision of the law.*** The Applicant is before this Honorable Court seeking for an extension of time to file an application for certification that points of law are involved in the decision of the High court of Tanzania against **Pc. Civil Appeal No. 19/2019.**

The Application is in support of an Affidavit sworn by the Applicant herein Propser Ngaiza Nyakale. The Applicant also

prays that this Honorable Court make any other order and reliefs this Court deems fit and just to grant.

While the matter was scheduled for hearing, the Respondent having duly been served did not enter appearance for the reason that she was attending her sick Mother. This Court ordered that the matter cannot be stayed indefinitely hence an *Exparte* hearing was decided in favour of the Applicant who was ordered to file a Written submission in support of his application.

The Applicant in the instant application avers that he is the unsuccessful party in **PC. Civil Appeal No. 19 of 2019** in which he was challenging the decision and decree on appeal of the District Court of Temeke which upheld the decision of Mbagala Primary Court.

Further, that the Applicant having been dissatisfied with Judgement and the decree in **PC. Civil Appeal No. 19 of 2019** filed the notice of appeal vide exchequer receipt No. 246 71435 dated 03/09/2019 demonstrating the intention to appeal against the Court of appeal of Tanzania and also filed for certified copies of proceedings, judgement and a decree on appeal.

Moreover, the Applicant states that he was only supplied with copies of judgement and proceedings and has been following up for a copy of a decree on appeal which until the

date of filing this application the same was yet to be availed to him despite the reminder filed with the District Registrar of the High Court Dar es Salaam zone.

The Applicant maintains that the delay that led this application was not deliberate or actual by laxity but was due to failure to obtain the decree on appeal in time which is a very crucial document. It is in the submission that the Applicant sort the support of the case of ***KALUNGA & COMPANY ADVOCATES VS NATIONAL MICROFINANCE BANK 2006 TLR 235 (CA) and CONSOLIDATED CIVIL REFERENCE NO. 6,7 & 8 OF 2006, VIP ENGINEERING AND MARKETING LIMITED & 2 OTHERS VS CITIBANK TANZANIA LIMITED.***

It is from this point of this Application, I move forth into determining the Application before this Honorable Court.

It is trite law that an application for extension of time lies within the discretion of the Court and the court is required to consider the same judiciously. The case of ***MEIS INDUSTRIES LIMITED and OTHERS vs TWIGA BANKCORP (Misc. Commercial Cause No. 243 of 2015) [2016] TZHC Com D 17***, the Court observed that:

"That is to say, an application for extension of time is entirely in discretion of the Court to grant or to refuse, and that the extension of time may only be

granted where it has sufficiently established that the delay was with sufficient cause".

The delay in the circumstance of the matter at hand as caused by the Court to have supplies copies of a decree on appeal upon the matter that decided before this Honorable Court is purely not the wrong of the Applicant but of the Court itself. Hence it would be unjust to punish the Applicant for the wrong of the institution.

It is a principle of law that for an extension of time based on a technical delay ground, the reason for delay qualifies for a sufficient ground to be granted extension of time. The case of ***FORTUNATA MASHA VS. WILLIAM SHIJA & ANOTHER [1997] TZCA 14; (21 MAY 1997) TLR 154***, it was held that:

"....a distinction hard to be drawn between case involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal has to be instituted.

In the present case the Appellant had acted immediately after the pronouncement of the ruling

of the court "striking out" the first appeal. In these circumstances an extension of time ought to be granted..."

In the circumstance therefore and the reasons stated by the Applicant states that the delay was a technical delay hence the proper remedy is to grant the prayer for extension of time.

It is from the decisions and the reasons stated above, **I find that the Application before this Court has merits and is hereby granted.**

It is so ordered.



A handwritten signature in blue ink, appearing to read 'Mgonya', is written over the judge's name.

**L. E. MGONYA
JUDGE
23/04/2020**

Court: Ruling delivered in chamber in the presence of the Applicant in person and Ms. Msuya, RMA this 23th day of April, 2021.



A handwritten signature in blue ink, appearing to read 'Mgonya', is written over the judge's name.

**L. E. MGONYA
JUDGE
23/04/2020**