

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION No. 161 OF 2020**

(Arising from the Judgment of the Resident Magistrate Court of Mwanza  
in Civil Case No. 67 of 2013)

**MWANZA SACCOS LTD.....APPLICANT**

**VERSUS**

**DOROTEA ROBERT.....RESPONDENT**

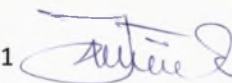
**RULING**

**28<sup>th</sup> June & 22<sup>nd</sup> July 2021.**

**TIGANGA, J.**

The abovenamed applicant has, through chamber summons that has been supported by an affidavit dully sworn by Lucas Masanja, Principal Officer of the applicant, lodged this application which contains a prayer that leave be granted to appeal against the decree of the Court of Resident Magistrate to the High Court of Tanzania out of time. The applicant also prays for the costs of this application.

The application was filed under section 14(1) of the Law of Limitation Act [Cap 89 R.E 2019] read together with sections 68(e) and 95 of the Civil Procedure Code [Cap 33 R.E 2019] as well as any other provision of the laws.

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Initially on, the applicant filed Civil Appeal No. 35 of 2020 against the impugned decree which was struck out by the High Court on 21<sup>st</sup> October, 2020 on the ground that it was filed without being accompanied with a copy of a decree.

With leave of the court, the application was argued by written submissions which were filed as scheduled.

The submission in chief filed in support of the application, was prepared by Kweka Law Chambers who were engaged for drawing only. In that, it was submitted that this application has been made after rectifying the mistake of not attaching a copy of the decree and the judgment appealed against to the memorandum of appeal. The applicant prays that in order to save the SACCOS this application has to be allowed so that the case can be heard and determined on merits.

It was further submitted in the submission in chief that, if the application is granted, there are overwhelming chances that the appeal will succeed because the respondent has not proved that there was no consent to mortgage the family properties including the house.

In the reply submission, the respondent through her counsel Mr. Nyamwelo, submitted that, the application is devoid of merits simply because the same was filed out of time for 63 days and the applicant

appeal within time but the same was struck out for failure to attach the decree of the decision appealed against. As far as the records go, the appeal was struck out on 21<sup>st</sup> October, 2020 and this application was lodged on 19<sup>th</sup> January, 2021 meaning that it was filed after 63 days from the date the appeal was struck out. The applicant therefore was supposed to tell this court what was being done during the 63 days, in other words good cause has to be shown before this court can grant the application for leave to appeal out of time.

Generally good cause means sufficient reasons. In determining what constitutes good cause or sufficient reason a number of factors have to be considered and these are; whether or not the application has been brought promptly; a valid explanation for the delay has been given and whether there was diligence on the part of the applicant. See **Juma Shomari vs Kabwere Mambo**, Civil Application No. 330/17 of 2020 CAT-DSM. Going through the affidavit that was filed in support of the application at hand, this court finds no explanation given by the applicant as to why it took them 63 days to lodge an application after the appeal was struck out.

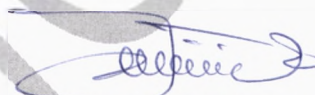
The application has therefore not been brought promptly, no account or valid explanation for the delay has been given, and there is

obviously no diligence on the part of the applicant. A mere claim that the appeal has overwhelming chances that it will succeed cannot be termed as good cause to move this court to grant leave to the applicant to appeal out of time without proving other factors pointed out above to appeal out of time.

From what has been stated above, it is clear that the applicant has failed to show good cause upon which this court can exercise the discretion to grant leave to appeal out of time. This application is unmeritorious and thus it is dismissed with costs.

It is accordingly ordered

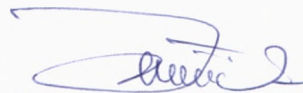
**DATED at MWANZA** this 23<sup>rd</sup> day of July, 2021



**J.C. TIGANGA**

**JUDGE**

Ruling delivered in open chambers in the presence Mr. Lucas Masanja, Manager of the applicant and Mr. Nyamwero, Advocate of the respondent through audio teleconference.



**J. C. TIGANGA**

**JUDGE**

**23/07/2021**