

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

MISC. CIVIL APPLICATION NO 10 OF 2021

(Arising from Civil Appeal No. 31 of 2017 of High Court of Tabora
in the District Registry of Tabora, Originally Civil Case No. 1 of
2017 of the District Court of Kigoma)

SALAMA MOHAMED.....APPLICANT

VERSUS

SAID JAFFARI.....RESPONDENT

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RULING

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Date of Submissions: 29/9/2021

Date of Delivery: 29/9/2021

AMOUR S. KHAMIS, J.

Salama Mohamed sought for an extension of time within which to file an application for restoration of DC Civil Appeal No. 31 of 2017 which was dismissed for non appearance on 12th day of November 2018.



The application was made by Chamber Summons under Section 14(1) of the Law of Limitation Act, Cap. 89, R.E. 2019 and supported by the applicant's own affidavit.

In the affidavit, Salama Mohamed alleged a communication break down with her advocate, one Mr. Kagashe resulting to dismissal of the appeal.

She deposed that she was not aware of a dismissal order and had to travel in numerous trips from Kigoma to Tabora but did not get copy of the dismissal order until on 23/02/2021.

She deposed further that being a peasant, she experienced heavy financial constraints and thus prevented from engaging an advocate.

Said Jaffari filed a counter affidavit in which he challenged reasons advanced by the applicant for the delay.

He averred that the appeal was dismissed following the applicant's continued absence for three dates and observed that miscommunication with an advocate was not a good excuse.

Said Jaffar further deposed that he would be prejudiced if the application is granted in terms of costs and time allocated to pursue the case.

Both parties appeared in person before me and the applicant adopted contents of the affidavit in support of the application.

In addition to the contents of the counter affidavit, Said Jaffar contended that the applicant sat idly for almost four (4) years and did not advance reasons for such inaction.



In rejoinder, the applicant averred that she failed to appear in Court due to sickness of her mother who suffered a stroke (paralysis) and she closely attended to her until her demise on 15/07/2021.

She accounted for several visits she made to the High Court Kigoma and High Court Tabora registry where she learnt that her appeal was dismissed for want of appearance.

Salama Mohamed recounted statements by Mr. Kagashe who kept informing her that the case file would be transferred to the High Court Kigoma.

The issue is whether the applicant has shown sufficient reason for extension of time.

It is trite law that in order for the Court to exercise its discretionary powers sufficient reason for the delay must be shown.

In ***PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICES V D. P. VALAMBIA (1992) TLR 185***, the Court of Appeal held that negligence or inaction on the part of the counsel does not constitute sufficient reason for extending time.

In ***YERO TRANSPORT SERVICES LTD & ANOTHER V ATTORNEY GENERAL & OTHERS, CIVIL APPLICATION NO. 58 "A"/2001*** (unreported), the Court of Appeal held that failure of a party's advocate to check the law is not sufficient ground for allowing an appeal out of time.

However, in ***J.D. SHIRIMA V AIDAN NDUNGURU, HIGH COURT DAR ES SALAAM, CIVIL APPEAL NO. 108/2004***, this

Court interpreted Section 14 (1) of the Law of Limitation Act, Cap. 89, R.E. 2019 in the words of Windhan C.J. (as he then was) in ***DAPHINE PARRY V MURRAY ALEXANDER CARSON*** (1963) E.A 546, thus:

“In exercising its powers under this provision the Court should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction for want of bonafide is imputed to the applicant.”

In the present case, the applicant established that she was made to believe that following establishment of the High Court Kigoma Registry, her case would be transferred to Kigoma where she resides.

Despite of that promise, when nothing seemed to happen, the applicant visited the High Court Kigoma and met a clerk, one Makoko who revealed that her case was not transferred to Kigoma but had been dismissed in the High Court Tabora.

Following that revelation, the applicant travelled to Tabora and applied for copy of the dismissal order which was supplied to her on 23/02/2021.

The present application was lodged on 23/04/2021 and a delay was attributed to the applicant’s inability to raise requisite legal fees for engaging an advocate.

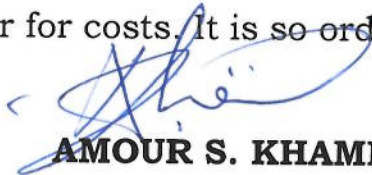
Apart from that, the applicant demonstrated that throughout pendency of DC Civil Appeal No. 31 of 2017 in this Court and after its dismissal, she was nursing her biological mother who suffered from a stroke and needed maximum attention.

From this background, I am convinced that the applicant did not idly seat on her right but acted reasonably in the circumstances where an advocate, contrary to the professional calling, misled her into believing that her case was transferred to Kigoma High Court registry which was not the case.

Consequently, the application is granted. Let the applicant file the intended application for setting aside the dismissal order within thirty (30) days from date of delivery of this ruling.

Bearing in mind that DC Civil Appeal No. 31 of 2017 originated from Civil Case No. 1/2017 of the District Court of Kigoma and that both parties are residents of Kigoma, I direct that the application for setting aside the dismissal order and subsequent proceedings be lodged in the High Court of Tanzania, Kigoma District Registry.

I make no order for costs. It is so ordered.



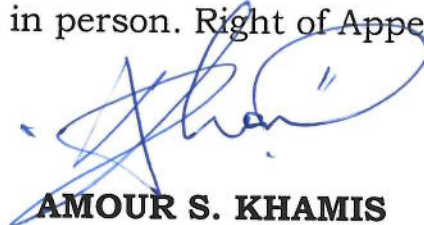
AMOUR S. KHAMIS

JUDGE

29/9/2021

ORDER:

Ruling delivered in Chambers in presence of both the applicant and that respondent in person. Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

29/9/2021