

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**MISC. CIVIL APPLICATION NO. 114 OF 2021**

*(Arising from the Ruling in Misc. Civil Application No. 161 of 2020 dated 23<sup>rd</sup> July 2021 originating Mwanza Resident Magistrates Court Civil Case No. 47 of 2013)*

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

**Versus**

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

**RULING**

15<sup>th</sup> & 18<sup>th</sup> October, 2021

**RUMANYIKA, J:.**

The application for leave with respect to decision of this court (Tiganga, J) date 23/07/2021 Mwanza Saccos Ltd (the applicant) to the Court of Appeal Tanzania was brought under S. 5(1)© of the Appellate Jurisdiction Act Cap. 141 RE. 2019. It is supported by affidavit of Lucas Masanja whose contents Mr. Lucas Boniphace adopted during audio teleconference hearing on 15/10/2021. Mr. Musa Nyamwero learned counsel appeared for Dorotea Robert (the respondent). I heard them through mobile numbers 0754 802 564 and 0716 543 137 respectively.

In a nutshell, Mr. Lucas Boniphace submitted that not only when striking out the alleged incompetent appeal this court Ismail, J did not

appoint time within which, if wished the applicant to come back, but also actually copy of the impugned decree it was appended to the memorandum of appeal otherwise the district registrar would not have admitted it in the first place much as where, like it was the case here they period was not in the CPC stated, the appellant had 90 days but he lodged the application for extension of time within 63 days of the order striking the appeal (paragraphs 3 – 6 of the supporting affidavit).

In reply, Mr. Musa Nyamwero learned counsel submitted that as a matter of fact having had been late for 63 days the applicant had assigned no sufficient ground for extension of time and in the instant application the applicant had raised no noble points by way of appeal arguable in the Court of Appeal. That is all.

The central point here, in my considered opinion determinable by the Highest fountain of justice however long it might be, whether or not in this case the court that struck out the appeal gave one time limit to come back is whether an application for extension of time within which one to lodge an appeal was ever time barred much as it is trite law that when determining applications for leave to appeal the rule of this court wasn't to re hear the matter, with regard to the issue raised to users powers of the

court of Appeal of Tanzania or with regard to what points should go to the CAT act as a conduit pipe but with all intents and purposes as generally important as the point herein raised by the applicant was I am inclined to grant the application. The application granted. Given its nature each party shall bear their costs. It is so ordered.

**S.M. Rumanyika**  
**Judge**  
**17/10/2021**

The ruling delivered under my hand and seal of the court in chamber this 18/10/2021 in the absence of the parties.



**S.M. Rumanyika**  
**Judge**  
**18/10/2021**