

**IN THE HIGH COURT OF TANZANIA UNITED REPUBLIC OF  
TANZANIA**

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 618 OF 2020**

*(Arising from: Misc. Civil Application No. 139/2018 District Court of Temeke  
decision of Hon. Mwaikambo RM dated 26/2/2019)*

**LEVINI KAVISHE .....APPLICANT**

**VERSUS**

**ANNASIETA KILLIAN KINGWELE MISI.....1<sup>st</sup> RESPONDENT**

**MS BIBOZE t/a MUNASAM AUCTION MART.....2<sup>nd</sup> RESPONDENT.**

**RULING**

**Mruma, J.**

This is an application for extension of time within the Applicant Levina Kavishe can file an appeal to this court out of time.

The Applicant was a party in Matrimonial Cause No.17 of 2016 of the District Court of Temeke at Temeke. In that case the District Court passed among other orders an order for distribution of what the court considered as jointly acquired matrimonial assets. Among the properties covered by that order was a house number KND/MBR/MKO/35/14 located at Makoka area, Makuburi Ward. The house was sold in a public auction held on 17<sup>th</sup> June 2018. It is the contention of the Applicant that the said auction was attended by very few people and there were no notice or

Under section 25(1) (b) of the Magistrate Courts Act, a party aggrieved by the decision of a district court in the exercise of its **appellate** or **revisional** jurisdiction may within thirty days after the date of the decision or order appeal therefrom to the High Court; and the High Court may extend time for filing an appeal either before or after such period of thirty days has expired [emphasize supplied] Because the law under section 25 (1) of the Misc. Civil Appl does not provide avenue for a party who is aggrieved by the decision of the district court in the exercise of its original jurisdiction to apply for extension of time, the party so aggrieved may resort to section 14(1) of the Law of Limitation Act. Under that law a party who finds himself out of time can file an application for extension of time to the High Court if he/she can establish sufficient cause for the delay.

Accordingly, any appeal or application can be admitted by the Court after the prescribed period if the Applicant establishes sufficient cause for not preferring the appeal or application within such period. The reason advanced for the delay in lodging and appeal in this case is ignorance of the law, it being alleged that instead of filing an appeal, the Applicant preferred a revision proceeding.

Reading section 14(1) of the Law of Limitation Act [cap 89 RE 2019], it would suggest that before extension of time is granted under that law, court must be satisfied that the Applicant has acted bona fide and not in a negligent manner. This is so because any delay must be condoned by the appellant court by way of exception and not as of a rule.

I note from the record of this court (RwizileJ) in its ruling dated 19.11.2020 at page 2 that parties were not represented in Civil Revision No.12 of 2019. The Applicant being a layman was therefore not negligent in filing revision instead of an appeal. He acted bona fide.

I also note that there was a short delay between the dismissal of revision No.12 of 2019 on 19.11.2020 and the filing of this application on 27<sup>th</sup> November 2020. This short delay is justifiable in the circumstance of this case.

Finally I note that the Applicant is complaining that the house was sold in a lower price that out to have been sold. I don't see how the opposite party can be prejudiced of her rights if the application is granted.

That said, I grant the application. Time is hereby extended for 14 days from the date of this ruling for the Applicant to lodge his appeal to this court. Each party shall bear own Costs.



A handwritten signature in black ink, appearing to read "A. R. Mruma".

**A. R. Mruma**

**Judge**

**3/12/2021.**

**3/12/2021**

Coram : Hon. A.R.Mruma,J.  
For the Applicant : Present  
For the Respondent : Present  
Cc : Mwangoka

**Court:** Ruling delivered in presence of the parties this 3<sup>rd</sup> day of December, 2021.



**A. R. Mruma**

**Judge**

**3/12/2021**