

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 08 OF 2021**

**(Originating from Civil Case No. 45/2018, In the Resident Magistrate's  
Court of Morogoro, at Morogoro)**

**FINCA MICROFINANCE BANK LIMITED ..... APPLICANT**

**Versus**

**MICHAEL THOMAS (administrator  
of the Late CECILIA VICTOR) } ..... RESPONDENT**

**RULING**

**Last Order: 02/11/2021**

**Date of Ruling: 23/11/2021**

**M. J. CHABA, J.**

FINCA Microfinance Bank Limited, the applicant herein filed the instant application for enlargement of time within which to file an appeal out of time against the decision of the Resident Magistrate's Courts of Morogoro, at Morogoro in Civil Case No. 45 of 2018 delivered on the 27<sup>th</sup> day of July, 2020. The application has been preferred by way of chamber summons made under sections 14 (1) and 19 (2) and (3) of the Law of Limitation Act [Cap. 89 R.E. 2019] and section 95 of the Civil Procedure Code [Cap. 33 R.E. 2019]. It is supported by an affidavit duly sworn by Mr. Renatus Mushi, the principal officer of the applicant.

The matter was consensually scheduled for hearing by way of written submissions. It was agreed that the applicant had to file her

written submission in chief on or before 27<sup>th</sup> August, 2021 and the respondent had to file reply thereto on or before 2<sup>nd</sup> September, 2021. Re-joinder (if any) had to be filed by the applicant on or before the 8<sup>th</sup> September, 2021. According to the record, only the applicant adhered to the court's schedule by filing her written submission in support of this application for extension of time to appeal out of time against the decision of the Resident Magistrate's Courts of Morogoro, at Morogoro in Civil Case No. 48 of 2019.

In this application, Ms. Akwila Wilbard, learned counsel from the applicant's legal department entered appearance for the applicant, whereas the respondent enjoyed the legal services of Ms. Eileen Wamunza, learned counsel.

As gleaned from the applicant's affidavit, the impugned decision was delivered on 27/07/2020 in favour of the respondent. Aggrieved by the decision, the applicant lodged a notice of intention to appeal before this Court on 07/08/2020 and later on, unsuccessfully applied in time to be supplied with the copies of judgment, decree and trial court proceedings on the same date. She further wrote two letters and presented before the trial court requesting the documents on 14/08/2020 and 17/09/2020 respectively, reminding the trial court to issue her with the copies of judgment, decree and trial court proceedings. The Court supplied the copies of judgment and decree on 27/11/2020, but without the copy of trial court proceedings. In the circumstance, the applicant found herself out of time to file her appeal because the time had already expired.

On the other hand, the respondent through his counter affidavit conceded that the copies of the documents sought were actually signed by the trial magistrate and the same were ready for collection by the parties on 27/10/2020. He argued that the applicant endeavoured to account for the delay from 07/08/2020 up to 20/11/2020, but did not account for further delay up to 06/01/2021 when this application was filed. He emphasised that the applicant failed to demonstrate and exhibit diligence by failing to give an account why she delayed to file such an appeal in time from the date she was supplied with the documents on 20/11/2020 to 06/12/2021 so as to warrant this court grant the prayers sought.

From the above rival submissions, the question for determination is whether or not this application for extension of time to file an appeal out of time against the decision of a trial Court in Civil Case No. 48 of 2019 has merit.

At the outset, extension of time is the discretionary powers of the Court. However, the duty of the applicant is to disclose sufficient reasons for each delay. The best reason is that the applicant should not be counted as the source of delay. In addition, the court in exercising its discretionary powers, must take into consideration all relevant factors, including the need to arrive to a final and conclusive verdict of the controversy by the superior court.

As the court record reveals and partly stated by both parties, it is undisputed that the judgment was delivered on the 27/07/2020, whereas copies of the judgment and decree were supplied to applicant on 20/11/2020. The case whose appeal is being sought emanates from

the Resident Magistrate's Court of Morogoro, at Morogoro (Original Civil jurisdiction) where the governing law is Civil Procedure Code [Cap. 33 R.E. 2019] (the CPC). The CPC is silent in respect of time limit for filing an appeal. However, Item 1 of Part II of the Schedule to the Law of Limitation Act [Cap. 89 R.E. 2019] provides for ninety (90) days' time limit for filing an appeal under the CPC. As to the question when the time starts to run, it is now settled that the same starts to run the day after receipt of the copies, where an intended appeal requires copies of judgment, decree and proceedings be appended thereon as a matter of procedure. This is provided for under section 19 (2) of the Law of Limitation Act [Cap. 89. R.E. 2019].

Another key point to consider is whether the right to appeal is automatic or not. On this facet, there are two views. The first view holds that it is automatic. The case of **Sosten Valencia Mbwagha v. Bria Simbwango and Juma Samson**, Land Appeal No. 69 of 2019, HCT (Mbeya) (2020) is amongst. The second view of interpretation is that although the party would otherwise be within time, the right to appeal ceases to be automatic. Facts establishing reasons for delay, supply of copies along with others, may stand to be good reasons in application for extension of time and not in the appeal itself. **Tanzindia Assurance Co. Ltd and Another v. Richard Augustine Zuberi**, Civil Appeal No. 129 of 2019, HCT (Dsm) (2020) is one of those decisions that subscribe to the second view.

I am also mindful that the applicant referred this court to the case of **Sosten Valencia Mbwanga's** case, which subscribes to the former view. But, in the instant application, I am of the opinion that, if the

appellant believed that this right is automatic, she would not have filed the instant application. Unlike the respondent who at least filed his counter affidavit opposing the application on merit. In my meditation of the law, the latter view is the most suitable interpretation. Reference to section 19 as a whole and on a specific scrutiny of section 19 (5) of the Law of Limitation, it gives strong suggestion that the right to appeal in the circumstances like the matter at hand, cannot be automatic despite the reason for delay being delay in supply of copies of judgment, decree and trial court proceedings. This situation suggests that there must be an application for extension of time.

As alluded to above, it is trite principle of law that the court's powers to grant extension of time are discretionary and should be exercised judiciously. This was particularized in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT (Arusha) wherein the case of **Mbogo v. Shah [1968] EA 93** was referred. In this case, the Court of Appeal of Tanzania elucidated that to exercise the powers judiciously is to decide by rules and reasoning. As regards to the application for extension of time, the court established that the said powers will have been so judiciously exercised if the court before granting or refusing extension of time would have considered the important parameters based on the circumstances while all relevant factors being taken into account.

To bolster her argument, the applicant referred this court among others, to the case of **Lyamuya Construction Company Ltd v. The Board of Registered Trustees of Young Women Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010; which is



also synonymous to the principle stated in the case of **Ngao Godwin** (supra). In principle, it establishes what now stands to be the guidelines for extension of time. As highlighted by the learned counsel for the applicant when citing the case of **Nanda Panga v. Asha Seif and 2 Others**, Civil Application No. 312 of 2020 CAT – Tanga (Unreported), quoting with approval the case of **Lyamuya Construction Company Limited** (Supra), the Court of Appeal of Tanzania held that, there are determinant parameters that can be tested against each case before the court can grant extension of time, namely:

- (a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

Now, placing reliance within the realm of the above principle, can it be said that in the circumstance of this case the applicant has managed to account and show sufficient cause for the delay to warrant this court grant the prayers sought? In my view, I think the answer is positive. As gathered from both the applicant's affidavit and written submission advanced by the learned counsel, it is accepted as true that the applicant did succeed to account for the delays from 27/07/2020 to the date she received the documents on 20/11/2020. She then electronically filed instant application on 11<sup>th</sup> day of December, 2021 but in vain due to technological faults. She was advised to file manually and complied with the advice on the 6<sup>th</sup> January, 2021. In the circumstance of this

case, it is the findings of this court that the fault was not caused by applicant, but rather was due to delay in supply of the copies of judgment, decree and trial court proceedings as demonstrated above.

Moreover, the applicant unveiled diligence when she filed a notice of intention to appeal within the prescribed time as indicated in Annexure F-1, and the appellant's advocate wrote letters before the trial court requesting to be supplied with the said documents as shown in Annexure F-2. Hence, on account of the above explained sufficient cause and on the basis of the cited provisions of the law under sections 14 (1) and 19 (2) and (3) of the Laws of Limitation [Cap.89 R.E. 2019] read together with section 95 of the CPC, and on the strength of the cases cited by the applicant, I am satisfied in my mind that the applicant deserves to be granted with an enlargement of time to file her appeal out of time.

In the result, I hold that the applicant has adequately succeeded to spot and exhibit reasonable and good cause for the delay not only to persuade this court, but also to warrant me to exercise my discretion to extend the time sought by the applicant as prayed. The application is hereby granted as follows:

- (1) The Applicant to file Appeal to the High Court of Tanzania within thirty (30) days from the date of this Ruling.
- (2) Considering the nature of this application, each part to bear its own costs.

**Order accordingly.**

**DATE at MOROGORO this 23<sup>rd</sup> day of November, 2021.**



**M. J. CHABA**

**JUDGE**

**23/11/2021.**

This ruling delivered at my hand and Seal of the Court at Morogoro this 23<sup>rd</sup> day of November, in Chambers in the presence of Mr. Nimrod Msemwa, learned counsel - holding brief for Mr. Makame Zumo, learned counsel for the applicant, and Mr. Michael Thomas, herein the respondent.



**M. J. CHABA**

**JUDGE**

**23/11/2021.**

Rights of Appeal to the parties fully explained.



**M. J. CHABA**

**JUDGE**

**23/11/2021.**