

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO.137/2021**

**(Arising from Civil Revision No.19/2020 of Kinondoni District Court)**

**MOHAMED ABDALLAH OMARY (as the Administrator of the Estate  
of the Late**

**AMANI OMARY.....APPLICANT**

**VERSUS**

**HANNAT MOHAMED.....RESPONDENT**

**RULING**

6/9/2021 & 7/10/2021

**N.R. MWASEBA, J.**

This application was filed under certificate of urgency. It was filed by chamber summons supported by an affidavit of Mohamed Abdallah Omary. The same was preferred under Section 25(1) (b) of Magistrates' Court Act, Cap 11 R.E 2019 and Order XLIII Rule 2 of Civil Procedure Code, Cap 33 R.E 2019. The applicant is seeking for orders that:

- i. This honourable court may be pleased to extend time within which the applicant can lodge his appeal out of time against the impugned decision in Civil Revision No.19/2020 issued by Hon. A.M. Lyamuya (PRM) of the Kinondoni District Court at Dar es Salaam.*
- ii. Costs of this application to abide the event.*
- iii. Any other relief.*

In the affidavit affirmed by the applicant he averred that the reason for his delay to appeal against the impugned decision in Revision No.19/2020 was a delay to be supplied with copies of requisite documents and illegality which tainted the proceedings of the lower court. In his supplementary affidavit sworn by his advocate, he averred that he was unable to access the control number for payment which contributed to his delay.

It has to be noted that the respondent did not file his counter affidavit, despite his prayer to this court on 10/8/2021. Yet, at the hearing, neither the respondent nor his advocate entered appearance. Mr Lyimo learned advocate, represented the applicant. The matter was therefore heard *ex parte*.

It was argued by Mr Lyimo that, since the respondent failed to file his counter affidavit, he therefore loses his right to make the submission. To support his argument, he cited the case of **Gasper Otieno Marko and 11 Others vs UDSM & AG**, Civil Application No.58/2000 (unreported).

When submitting on the application the learned advocate argued that, application of this nature needs sufficient cause to be shown for the same to be granted. He relied on the case of **Michael Lessen Kweka vs John Eliagi [1997] TLR 152.**

He further asserted that, the reasons for his delay were that: he was supplied with copies of necessary documents belatedly; failure to access control number for payment due to network problems; and illegalities which he alleged to have tainted the proceedings of the lower court in Revision No. 19/2020. He referred this court to para 5, 6 and 8 of the affidavit and para 3 and 4 of the supplementary affidavit. He also cited the cases of **John Ordoro Chacha vs Dar Cool Makers Ltd**, Civil Application No.99/2014 (unreported), **Zaina Mohamed Msangi vs Lameck Lusonyekwa**, Misc. Land Application No. 828/2018, **Principal Secretary Ministry of Defence and National Service vs Devram Valambhia [1992] TLR 182** and **Danford Elisante Ngowo (as administrator of the estate of late Robert Elisante Ngowo) vs Jenerali Ulimwengu & others**, Misc. Land Application No.120/2019. He then prayed for this application to be granted with costs.

Having considered the applicant's submission, I am in agreement with the learned counsel that since the respondent failed to file his counter affidavit and enter appearance, an inference is made that he did not wish to contest this application. However, despite the fact that, this application was

uncontested, the question to be asked would be, does the applicant establish sufficient cause to warrant this application?

It is a settled principle that granting or refusing to grant extension of time is absolutely the court's discretion. Nevertheless, the same has to be judiciously exercised upon sufficient cause being shown. The same argument was stated in the case of **Constantine Victor John vs Muhimbili National Hospital**, Civil Application No.214/18 and in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012 when the Court of Appeal of Tanzania held, *inter alia* that:

*"...It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse, extension of time may only be granted where it has sufficiently established that the delay was with sufficient cause..."*

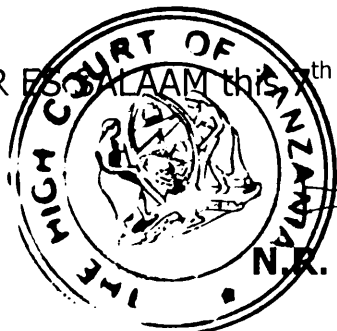
Coming to this application at hand, it is on record that the impugned decision was delivered on 26/1/2021, and this application was filed on 29/3/2021, which is an expiry of 63 days. Whilst, the applicant claimed that the ruling and drawn order were not supplied on the said date, he stated at para 5 of his affidavit that he was supplied with the ruling on 12/3/2021. After a perusal of the record, it is shown that the drawn order which was attached as *Annexure MAO-3* lacks one page, hence impossible to ascertain when was the same issued, besides the letters

which were received by the district court as reminder for the same to be supplied.

It is therefore my considered view that, time started to run on 12/3/2021 when the applicant claimed to be supplied with the ruling. Counting from the said date, the applicant was within time when filing this application but as for now the time has already lapsed. With that being said, I hold that waiting for necessary documents is considered to be a sufficient cause for this application to be granted. I thus hereby grant this application. The applicant is given 14 days from the date of this ruling to file the intended appeal.

No order as to costs.

DATED at DAR ES SALAAM this 7<sup>th</sup> day of October, 2021.



*N.R. Mwaseba*  
**N.R. MWASEBA**

**JUDGE**

**7/10/2021**