

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO**

MISC. CIVIL APPLICATION NO. 15 OF 2022

*(Originating from the decision of the District Court of Kilosa on civil application No. 8 of 2021
delivered on 2nd June, 2021)*

ALFAXID BWILE KINILIGA APPLICANT

VERSUS

DORIKA CHELELE..... RESPONDENT

RULING

Hearing date on: 23/06/2022

Ruling date on: 24/06/2022

NGWEMBE, J:


The applicant via his advocate Ester Maugo assisted by Olaf Kaboboye stood firmly on the hearing date of this application for extension of time and argued vigorously to convince this court to grant extension of time so that he may actualize his intention to appeal against the offending judgement of the District court for Kilombero.

The chamber summons herein is supported by an affidavit of the applicant comprising four (4) relevant paragraphs of 5, 6, 7 & 8. After the trial court's judgement and being aggrieved with that judgement and decree, he realised that he has right to appeal to this court. Timely, he lodged his appeal at the High Court Dar es Salaam district registry same was registered as Civil Appeal No. 322 of 2021. Unfortunate such

appeal, after lapse of time was observed that same was wrongly lodged in court, hence the applicant's advocates successfully prayed to withdraw it, which prayer was granted. The withdraw was effected on 21st April, 2022. Thereafter, alas the applicant was caught in the web of time limitation, hence preferred this application for extension of time.

As stated herein above, the reason for his delay, is rightly disclosed in paragraphs 5, 6, 7 and 8 of his affidavit. In brief he discloses that he lodged his appeal timeously, but unfortunate such appeal No. 322 of 2021 was wrongly preferred, thus withdrew it. Justified his delay was not due to his indolence, but because of technical delay.

The learned advocates for the applicant, reiterated to the contents of the affidavit. Insisted that, under section 14 (1) of the Law of Limitation Act, this court may invoke its discretionally powers to grant extension of time, so that, the applicant may realise his right to appeal against the offending judgement and decree.

In turn the learned advocate Jovit Byarugaba briefly resisted the application by pointing out quite relevant principles governing applications of this nature. That he was surprised and asked a valid question of how possible the former appeal was mistakenly filed in court, while the applicant was represented by an advocate? Equally important he posed another terminology of window/forum shopping or testing the depth of water by filing an incompetent appeal to the court and later withdrawing it. 

Insisted that the application be dismissed for failure of the applicant to account for each day of delay. Supported his submission by

referring this court to the case of **Dar es Salaam City Council Vs. S. Group Security Co. Ltd, civil Application No. 234 of 2015**, where the Court of Appeal insisted on accounting of every day of delay.

It is well – known, powers to extend time under section 14 of the Law of Limitation Act is vested to the discretion of this court upon being satisfied that there was good cause or sufficient cause for delay. The law also requires the applicant to disclose reasons for each day of delay. I would therefore agree with the defence counsel that the applicant being represented by advocates, ought not to commit such grave legal mistake of filing an incompetent appeal and after lapse of time withdrawing it.

The reason to which led the applicant to withdraw the already instituted appeal and making this application for extension of time may be termed as forum shopping. More so, there are numerous precedents on application for extension of time, but always the doors are not closed for delay caused by good cause. (See the case of **Lyamuya Construction Co. Ltd Vs. Board of Reistered Trustees of Young Women’s Christian Association of Tanzania; civil application No. 2 of 2010; Bakiri Israel Vs. Kiwengwa Strand Hotel Ltd; civil Application No. 116 of 2008** and many more. Yet this court under section 14 of the Law of Limitation Act may exercise its powers and grant extension of time.

Considering deeply the original of this matter is a matrimonial dispute between the former loving spouses, that it and if the dispute is left un attended conclusively, may escalate their feuds and tensions



among them. With only that reason, and for the ends of justice, this application should be considered positively.

Accordingly, I proceed to grant extension of time, the applicant may actualize his intention to file the intended appeal within 20 days from the date of this ruling.

I so order.

DATED this 24th day of June, 2022.



**P.J. NGWEMBE
JUDGE
24/06/2022**

Court: Ruling delivered in chambers on this 24th day of June, 2022 in presence of the applicant in person and in the presence of Jovit Byarugaba Advocate for the respondent.

Right to appeal to the court of appeal explained.



**P. J. NGWEMBE
JUDGE
24/06/2022**