


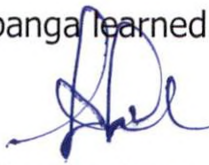
With respect to the respondent's argument that the application has been filed under the wrong provision of law, there is no doubt that this court is clothed with jurisdiction to grant it and the overriding objective principle can be properly invoked in this case, particularly where it is clear that the applicant was denied a fundamental principle of natural justice of being condemned unheard.

Order accordingly.



W. P. Dyansobera
Judge
20.7.2021

Delivered this 20th day of July, 2022 in the presence of the Applicant, Respondent and Mwanaupanga learned Counsel for applicant.



W. P. Dyansobera
Judge

transferred to the Subordinate Court to be heard by a Resident Magistrate to whom Extended Jurisdiction had been conferred.

There is nothing showing that the applicant was apprised of all these procedures. Besides, apart from the fact that there was no proof that summons was duly served on the applicant, there is no proof of service exhibited in court showing how and when the serving officer served the applicant. In other words, proof of service is wanting.

In such circumstances, my discretion which is unfettered, should be flexibly exercised regard being had to the facts of this case as explained hereinabove. I am guided by the decision in the case of **African Airlines International Ltd v. Eastern and Southern African Trade Development Bank** [2003] 1EA 1 (CAK) cited to me by learned Counsel for the applicant where the defunct East African Court of Appeal held that:

'In an application for extension of time, the discretion which falls to be exercised is unfettered and should be exercised flexibly with regard to the facts of the particular case.'

I am in no doubt that the reasons stated by the applicant were beyond his control. Refusing to grant the extension of time would, in my view, deny the applicant of the opportunity of being heard this may amount to a denial of justice.

the appeal suo motu. He argued that there was no proof that the applicant made a follow up of his appeal.

I have considered the material on record and the rival submissions of both learned Advocates. There is no doubt that the grant or refusal of extension of time is within the discretionary powers of the court. This discretion is judicial and has, therefore, to be exercised judiciously and judicially taking into account that its exercise must depend on the peculiar circumstances of each individual case.

In the application under consideration, the main reason advanced by the applicant is that he was not served with the summons. The respondent has not disputed this fact.

I think this argument has substance, once the appeal had been lodged and assigned, it was incumbent upon the court officer concerned to issue the summons to the parties, the appellant inclusive. As the record shows, no summons was issued and if issued, there is no proof that it was served on the applicant. It is uncontroverted contention of the applicant that he made follow ups with the registry to know the date the appeal had been slated for hearing but his efforts were in vain. The argument on part of the respondent that the applicant was reckless has no basis particularly where it is clear that after the appeal was filed in the High Court it was

It would seem the appellant, still desirous of pursuing his rights intended to seek to set aside an order dismissing his appeal, however, he found himself entangled in limitation bar. He has now come to this court seeking an order for extension of time for him to set aside the dismissal order dated 28th June, 2021

The application has been made under Section 2 (1) of the Judicature and Application of Laws Act [Cap 358 R.E.2019] and the same is supported with affidavits deposed to by the applicant and Masoud Shaibu Mwanaupanga, his learned Counsel.

The application has been resisted by way of Counter affidavit filed by the respondent.

According to the affidavits and the learned Counsel's submission, the main ground advanced in support of the application is that there was no services of summons effected to the applicant and that there were many attempts by the applicant to make a follow up in the Registry so as to know if the appeal had been scheduled for hearing. The efforts proved futile as the applicant found that his appeal had been dismissed for want prosecution on 28th day of June, 2021.

Refuting, Counsel for the respondent submitted that the applicant was reckless to make a follow up of his appeal and the respondent did not pray for the dismissal of the appellant's appeal, rather the court dismissed

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 129 OF 2021

(From the Decision of the Resident Magistrate Court with Extended Jurisdiction of Mwanza at Mwanza in Extended Jurisdiction RM Appeal No. 3 of 2021 CF: PC Civil Appeal No. 62 of 2021 High Court. Arising from 62 of 2020 of Nyamagana District Court. Original Civil Case No. 294 of Mwanza Urban Primary Court)

JONATHAN KALAZE.....APPLICANT

VERSUS

LAURENCE BWAKILA.....RESPONDENT

RULING

25th May & 20th July, 2022

DYANSOBERA, J:

The applicant Jonathan Kalaze, having been dissatisfied with the decision of the first appellate District Court of Nyamagana preferred his appeal to this court. The appeal was registered as PC Civil Appeal No. 62 of 2021. The appeal was, however, subsequently transferred to and to be heard by a Resident Magistrate to whom Extended Jurisdiction had been conferred (Ms. Ndyekobora, SRM). There, it was registered as RM Appeal No. 3 of 2021. The appeal was not heard on its merits as it was dismissed for want of prosecution on 28th June, 2021 for non-appearance of the applicant.