

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TEMEKE HIGH COURT SUB-REGISTRY)
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE

MISC. CIVIL APPLICATION NO. 7 OF 2022

*(Originating from Misc. Civil Application No. 326 of 2016 of the Temeke District Court
before Hon. M. A. Batulaine – RM)*

SELINA STEVEN MALLYA.....APPLICANT

VERSUS

MWAMVITA RAJABU MUHOZA (Suing as a next friend on NEEMA STEVEN MALLYA
and ADAM STEVEN both being Minors)**RESPONDENT**

RULING

13/06/2022 & 06/07/2022.

I.C. MUGETA J,

The applicant prays for orders of extension of time within which to file an appeal against the decision of the Temeke district court in Misc. Civil Application No. 326 of 2016 date on 30/06/2017. The chamber summons was drawn by Sylvester Oswald Mgonja of Ela, advocates. The respondent did not file a counter affidavit. She is represented by Mohamed Mkali, learned advocate.

On the hearing date, the applicant and her counsel did not enter appearance.

As the chamber summons is supported by an affidavit, I decided to proceed



with the hearing. I fully subscribe to the position taken by my brother Justice Mlyambina in **Auwonekye Mwenda V. Hezron Mangula**, Misc. Civil Application No, 05 of 2022, High Court, Iringa Registry (unreported) that *"in application made of chamber summons (sic) the matter should not be dismissed for want of prosecution or none appearance of the applicant and/or his advocate while there is affidavit evidence in records"*.

Mr. Mkali submitted on a point of law as he had not filed a counter affidavit. He argued that this application is an abuse of the court process as the applicant had filed Civil Revision No. 31/2017, High Court, Dar es Salaam Registry which was decided by my brother Mlyambina, J, on 08/10/2018. He presented the decision in that respect which was received and filed.

Upon comparison of the contents of the decision in Civil Revision No. 31 of 2017 and the affidavit supporting the application particularly the case number of the impugned decision, Misc. Civil application No. 326 of 2016 of the Temeke District Court, I am satisfied that the applicant had, indeed, filed a Civil Revision in the High Court and it was determined since August, 2018. Her application or extension of time to file an appeal against a decision which has already been challenged by way of revision is indeed an abuse of the court process.

I strike out the application with costs. However, such costs shall be borne by the advocate who drafted the chamber summons. He ought to have known from his client the existence of the already determined revision proceeding



Mugeta
I.C. MUGETA

JUDGE

06/07/2022

Court: - Ruling delivered in chambers in the presence of the respondent and in the absence of the applicant.

Sgd: I.C. MUGETA

JUDGE

06/07/2022